87-2133

Nos. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

LEGISLATURE OF THE VIRGIN ISLANDS,
Appellant,

HELEN GJESSING, Individually and as President of Save Long Bay Coalition, Inc., LEONARD REED, Individually and as President of Virgin Islands Conservation Society, Inc., KATE STULL, Individually and as President of League of Women Voters of V.I., Inc., LUCIEN MOOLENAAR, Individually and as President of Virgin Islands 2000, Inc., RUTH MOOLENAAR, Individually and as Director of St. Thomas Historical Trust, Inc.,
Appellants,

v.

WEST INDIAN COMPANY, LTD.,
Appellee,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,
Appellee.

On Appeal from the United States Court of Appeals for the Third Circuit

JURISDICTIONAL STATEMENT OF APPELLANT LEGISLATURE OF THE VIRGIN ISLANDS

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QUESTION PRESENTED

Does Act 5188 of the Legislature of the Virgin Islands violate the contract clause of Article 1, Section 10 of the United States Constitution when the Act's only effect is to subject appellee to the reasonable environmental permitting requirements of the Coastal Zone Management Act?

PARTIES TO THE PROCEEDINGS

The parties to these appeals are listed on the title page in their entirety. The Legislature of the Virgin Islands and the remaining intervenors are submitting separate jurisdictional statements to better reflect the interests and issues most important to the different parties. A Joint Appendix is used and all appendix references will be to this Joint Appendix.

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OPINIONS BELOW

The decision of the Third Circuit Court of Appeals which forms the basis of this appeal was entered on

March 31, 1988. The decision is reported at 844 F.2d 1007 (3rd Cir. 1988), and is printed in the Joint Appendix ("App.") at page 6a. The legislature timely filed its notice of appeal from this decision to the United States Supreme Court on June 13, 1988. App. 4a. The proceedings prior to that opinion were as follows:

WICO sued the Government of the Virgin Islands on August 14, 1986 seeking a temporary restraining order and other injunctive and declaratory relief to prevent enforcement of Act 5188 (the "Repeal Act.").

WICO's motion for a temporary restraining order was heard on August 19, 1986. The hearing was ex parte; the Virgin Island's Attorney General appeared only to withdraw his representation because the executive branch had vetoed the Repeal Act. The district court granted WICO's motion, temporarily restraining the Government of the Virgin Islands from enforcing the Repeal Act in any way.

WICO's motion for preliminary injunction was heard on August 26 and 27, 1986. The Legislature of the Virgin Islands was allowed to participate at this hearing. The district court issued its injunction on September 3, 1986, enjoining "the Government of the Virgin Islands, the Virgin Islands Legislature, and the citizen intervenors captioned above from enforcing Act No. 5188." *West Indian Co., Ltd. v. Government of the Virgin Islands*, 643 F.Supp. 869 (D.V.I. 1986). App. 53a.

The Legislature filed a timely notice of appeal from this decision on September 9, 1986. The United States Court of Appeals for the Third Circuit affirmed the district court's preliminary injunction on February 26, 1987. *West Indian Co., Ltd. v. Government of the Virgin Islands*, 812 F.2d 134 (3rd Cir. 1987). App. 50a.

WICO moved for summary judgment on its underlying claim on November 10, 1986. On April 13, 1987, the district court entered a Memorandum Opinion and Order

which, *inter alia*, granted WICO's motion for summary judgment. The district court additionally issued a separate permanent injunction ordering that the Government of the Virgin Islands, the Legislature of the Virgin Islands, and citizen-intervenors be permanently enjoined from interfering with WICO's project. *West Indian Co., Ltd. v. Government of the Virgin Islands*, 658 F.Supp. 619 (D.V.I. 1987). App. 41a.

JURISDICTION

This appeal is brought under 28 U.S.C.A. § 1254(2) from an opinion of the United States Court of Appeals for the Third Circuit rendered on March 31, 1988 holding invalid a statute of the Virgin Islands Legislature. This Court has apparently not yet determined whether the invalidation of a territorial statute confers appellate jurisdiction under 28 U.S.C.A. § 1254(2). Given Congress' grant of full legislative authority to the Virgin Islands in the Revised Organic Act of 1954, 48 U.S.C.A. § 1541 et seq., however, Appellant submits that an enactment of the Territorial Legislature should be treated as the equivalent of an enactment of a State Legislature.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 10, United States Constitution

> No State shall . . . pass any . . . law impairing the obligation of contracts. . . .

The Virgin Islands Coastal Zone Management Act, V.I. Code Ann. tit., XII § 901 et seq. (1987) and Acts Nos. 3326, 4700 and 5188 are reproduced in the appendix at pages 207a, 178a, 176a, and 175a, respectively.

STATEMENT OF THE CASE

This case involves three statutes enacted by the Legislature of the Virgin Islands in 1973, 1982 and 1986, respectively. The effect of the first two statutes was to

grant The West Indian Company ("WICO") a specific exemption from the need to seek a § 911 coastal zone permit for the filling and development of certain submerged land in St. Thomas harbor. The third statute repealed the first two and directed WICO to apply for such a permit. The court below found this third statute in violation of WICO's rights under the Contract Clause.

The proceedings that led up to the enactment of these statutes began in 1968 when the United States filed suit against WICO to quiet title in these harbor lands. The United States claimed it owned the submerged land because WICO's purported rights to dredge and fill under a 1913 grant from the Danish Government were invalid or had lapsed from non-use. App. 85a. The Government of the Virgin Islands was not named as a party to this action and never became a party.

WICO offered to settle its title claim with the United States by giving up its claimed rights to fill 42 acres in exchange for the right to fill 30 acres in the harbor. The trial judge wrote the Governor of the Virgin Islands and every member of the Legislature, at WICO's request, to strongly recommend settlement. App. 90a, 120a. The trial judge intimated that he might well find for WICO on the title question, although the case had not yet gone to trial. *Id.*

A Memorandum of Understanding ("Memorandum") setting forth settlement conditions was then signed by the parties to the 1968 litigation on October 3, 1973. The Legislature of the Virgin Islands had directed the Governor of the Virgin Islands to recommend to the U.S. Departments of Interior and Justice to implement a settlement a year earlier in Act 3326. App. 178a. The Government of the Virgin Islands was asked to, and did, sign this Memorandum although not a party to the litigation. App. 117a.

Further proceedings in the district court were then stayed pending fulfillment of the Memorandum's condi-

tions. Among those conditions was the requirement that WICO must quitclaim its 1913 dredge and fill grant from Denmark to the United States. Judgment would then be entered in favor of the United States, but giving WICO fee title and all reclaimation rights to the 30 or so acres it claimed. The Memorandum provided that any conveyance of land rights had to be made under the Territorial Submerged Lands Act. 48 U.S.C.A. § 1701 *et seq.* Under that Act, the Secretary of the Interior was required to notify the Committee of Interior and Insular Affairs of both Houses of Congress, which could disallow the conveyance within sixty days. 48 U.S.C.A. § 1701(c) (1972).

This conveyance was never brought before Congress, which amended the Territorial Submerged Lands Act in 1974. This amendment conveyed, subject to existing rights, title to all submerged lands in the Virgin Islands to the Government of the Virgin Islands "to be administered in trust for the benefit of the people thereof. App. 192a, 194a.

At WICO's suggestion, a First Addendum to the Memorandum of Understanding was executed on October 28, 1975 to reflect the changes in the Submerged Lands Act. This First Addendum basically substituted the Government of the Virgin Islands for the Department of the Interior of the United States. The Virgin Islands would thus convey the subject lands directly to WICO, rather than first obtaining title from the United States. App. 145a. This Addendum was not submitted to the Legislature of the Virgin Islands.

In 1978, the Virgin Islands Legislature enacted a Coastal Zone Management Act (CZMA) in order to quality for funds under 16 U.S.C.A. § 1451 et seq. The CZMA establishes regulatory procedures for the Virgin Island's administration of Trust and other coastal lands. App. 207a. All lands adjoining the coast, including reclaimed portions of the harbor, were made subject to the CZMA's

permitting procedures. These permits require the Government of the Virgin Islands to control the type and density of development in coastal areas in light of environmental and other local concerns. The CZMA has no effect on the fee title of lands privately held at the time of its enactment, but limits the nature and extent of future conveyances of submerged lands by the Government of the Virgin Islands.

WICO sent a letter and draft complaint to the Governor and Legislature of the Virgin Islands on March 16, 1979, stating that if the CZMA was applied to its property it would sue the Virgin Islands for five million dollars. App. 198a. In response, the Government of the Virgin Islands signed a Second Addendum to the 1973 Memorandum of Understanding in 1981 exempting WICO from the CZMA. App. 151a. The Addendum reduced the total amount of developable acres in the harbor to approximately 15 and purported to authorize development for any of a list of zoning uses on WICO's reclaimed land. The Second Addendum was ratified by the Legislature of the Virgin Islands by Act No. 4700 on March 24, 1982. App. 176a.

WICO did not begin actual dredging in the harbor until June of 1986. The Legislature then reviewed the entire history of the project and passed Act 5188 which repealed Act No. 3326 and Act No. 4700 and directed WICO to apply for a coastal zone permit under Sections 910 and 911 of the CZMA. The Governor vetoed the Bill on August 11, 1986, but was quickly overridden by the Legislature. The Department of Conservation and Cultural Affairs (now known as the Department of Planning and Natural Resources) then served a cease and desist order against WICO, preventing further work without a proper permit under the CZMA. App. 205a. This litigation is thus centered on the Legislature of the Virgin Islands' constitutional ability to require WICO to comply with the CZMA's permitting requirements for development in a sensitive coastal zone.

THE QUESTION PRESENTED IS SUBSTANTIAL

I. THE REPEAL ACT DOES NOT SUBSTANTIALLY IMPAIR ANY CONTRACT RIGHTS WICO MAY HAVE IN THE DISPUTED LAND.

At the core of the complex facts of this case is a situation not unlike the one addressed by this Court in *California Coastal Comm'n v. Granite Rock*, —— U.S. ——, 107 S. Ct. 1419 (1987). There, a mining company claiming title under an old federal statute sought to parlay its mining rights into a supremacy-based exemption from the environmental permitting requirements of California's coastal zone laws. Here a development company, claiming title under a long dormant letter from the Danish sovereign, seeks to parlay its alleged dredging rights into a colonial fiefdom that is constitutionally protected against compliance with the environmental permitting requirements of The Virgin Islands' coastal zone laws.

Appellant submits that the Virgin Islands Legislature has merely demanded that WICO apply for the same type of environmental permit as would be applicable to any one else in the same circumstance, and that no act of the Virgin Islands Legislature has affected whatever title WICO may have to its property. Furthermore, that even if some statutory provision were to be construed as unconstitutionally impairing WICO's title, the lower courts erred in striking down the entire statute including the environmental permitting requirements.

A. The Repeal Act Simply Requires WICO to Obtain Development Permits Under the CZMA.

The Repeal Act repealed Acts 3326 (authorization and recommendation to join settlement of quiet title action through Governor and U.S. Departments of Interior and Justice) and 4700 (Exemption from CZMA and legislation ratification of Second Addendum) and specifically provided that WICO must comply with § 911 of the CZMA. It affected only those aspects of that previous

statutes that required legislative action to be effective. Its intent and purpose was to subject WICO to the permitting requirements of the CZMA.

The Circuit Court correctly noted that the CZMA was designed "to set up a comprehensive program for the management, conservation, and orderly development of the coastal area . . . ." 844 F.2d at 1011. The CZMA provides the only means of controlling the intensive coastal development WICO is proposing. It ensures that development of sensitive coastal lands takes place in an environmentally sensitive manner.

The CZMA requires owners of submerged or filled lands to obtain permits under both Sections 910 and 911 prior to developing or occupying such lands. V.I. CODE ANN. tit. XII §§ 910(a)(1); 911(a)(1) (1987). It applies to both privately held lands and public trust land. The Circuit Court read § 911(a)(1) to limit WICO's interest in the subject lands to a permit or lease of no more than twenty years' duration. 844 F.2d at 1011-12, 1022. The Court's reading was erroneous and formed the basis for its entire discussion of the constitutional issues involved.

Section 911(a)(1) of the CZMA provides in its entirety that:

> No person shall develop or occupy the trust lands or other submerged or filled lands of the Virgin Islands without securing a coastal zone permit which includes, in addition to the elements of a section 910 permit, a *permit or lease* for the development or occupancy of the trust lands or other submerged or filled lands. (emphasis supplied)

The Circuit Court read the emphasized phrase as conjunctive, limiting WICO's property interest to a "maximum of 20 years." 844 F.2d at 1011. That is not what the statute says. The CZMA allows development and occupancy of privately held submerged or filled lands under

a *permit* that is issued for some unspecified definite term. That term could be for any number of years and is fully renewable. § 911(d)(1). A *lease* is required only for public lands, and may be issued only for a nonrenewable period of twenty years. § 911(d)(1). Permits have no such restriction. The Circuit Court confused the limited duration of a lease on public land with the unlimited duration of a permit on private land. If WICO's title is valid it would thus be free to apply for fully renewable permits for as long as it owns and develops the land in accordance with the CZMA's requirements.

B. The Repeal Act Has No Effect on Whatever Title WICO May Have Received From the United States.

1. *The CZMA Does Not Affect Title.*

The CZMA is a typical environmental regulatory permitting statute. It requires permits prior to developing and occupying environmentally sensitive land. It has no effect on title to privately held land because nothing in its provisions affect ownership or alienability of such land. The Circuit Court thus made a serious error when it found that the Repeal Act would prevent WICO from ever taking "title to the areas it fills . . . ." 844 F.2d at 35. WICO already has whatever title it may have acquired as a result of its settlement of the United States' 1968 quiet title action.

Only publicly held trust or other submerged or filled lands are limited in ownership to a twenty year lease under § 911(d)(2). Title to public trust land must remain in the public domain. It cannot be conveyed away in fee simple. Yet title to privately held lands remains freely alienable. The CZMA does nothing more than regulate development and occupancy of *all* coastal lands under § 910 and § 911. Whatever the state of WICO's title in its harbor property, the CZMA cannot affect it in any way.

2. *The Repeal of Acts 3326 and 4700 Does Not Affect WICO's Title.*

WICO's title to the land it claims in St. Thomas harbor was never dependent on some ratification from the Legislature of the Virgin Islands. Whatever title it has came from the United States as part of WICO's settlement of the 1968 quiet title action brought against it by the United States. Appellant neither concedes nor contests WICO's title. Its position is that the Repeal Act does not affect whatever title WICO received from the United States.

Neither the executive nor legislative branch of the Virgin Islands was a party to the 1968 quiet title action. They could not have been since the Virgin Islands had no legal interest in the disputed land. The Virgin Islands had no title in the subject submerged lands prior to the October 3, 1973 date of the Memorandum, and would have no title interest in the lands after the execution and performance of the Memorandum. Title was to flow from the United States through the Government of the Virgin Islands to WICO. The only reason the Government was even involved was because the then applicable procedures of the Territorial Submerged Lands Act, 48 U.S.C.A. § 1701 et seq., required such a complicated transfer.

Congress' amendment of the Territorial Submerged Lands Act in 1974 conveyed title to all submerged land in the territory then owned by the United States to the Virgin Islands. The First Addendum, which was never presented to the Legislature and was thus not addressed in the Repeal Act, merely noted this change in title. Title still came from the United States through the Virgin Islands and then on to WICO. The Government of the Virgin Islands was never required to pass judgment on that title.

More importantly, the Repeal Act could only affect Acts 3326 and 4700 to the extent they required legislative input in the first place. The legislature had no responsibili-

ties as to title under the Submerged Lands Act, from which WICO's claim of title derives.

The legislature was needed to exempt WICO from the CZMA's environmental permitting requirements in the Second Addendum, which was the very target of the Repeal Act. The transfer of title was from the United States to WICO. Any governmental duty of the Virgin Islands required for transfer of title could have been fully carried out by the executive branch, just as it was in the First Addendum.

Perhaps the best evidence of the Repeal Act's intent comes from its legislative history. During discussion of the then proposed repealing legislation, an amendment was proposed that would "designate the existing area as public." App. 180a. The sponsor of this amendment, Senator Bryan, was of the opinion that the land WICO dredged was "the people's land" and not WICO's. App. 183a. Senator Shatkin then asked counsel for the Legislature what the effect of such an amendment would be. App. 183a-184a. Counsel replied that "it would mean that the government has taken private property, and converted it into publicly owned property." 184a. The amendment was then voted on and failed, clearly reflecting the legislative intent to avoid infringing whatever title WICO may have had in that land. App. 184a.

3. *If WICO Believes the Repeal Act Affected its Title It Had an Adequate Remedy in a Quiet Title Suit.*

If WICO's true concern in this action is its claim to title, and not its displeasure with the CZMA's permitting requirements, it had an adequate remedy in its own quiet title action. Such actions are commonly used to set property rights in coastal lands. *See e.g. Alexander Hamilton Life Insurance Co. of America v. Government of the Virgin Islands*, 757 F.2d 534 (3rd Cir. 1985). WICO

could have avoided unnecessary constitutional questions while fully preserving its title interests by pursuing such a course.

Where such ordinary remedies can preserve contractual rights this Court has found that the contract in question has not been impaired. *See Hays v. Port of Seattle*, 251 U.S. 233, 237 (1920). *See also St. Paul Gaslight Co. v. City of St. Paul*, 181 U.S. 142 (1901). WICO could thus have received a full and fair hearing on all of its objections to the Repeal Act without requiring the lower courts to decide an unnecessary constitutional issue.

4. *Even if the Repeal Act Were Construed as Affecting WICO's Title the Lower Courts Erred in Striking Down the Entire Act.*

If the Repeal Act were to be construed in such a way that it unconstitutionally impaired WICO's title (and appellant submits that only a tortured construction would lead to such a conclusion) the unconstitutional portion of the act should have been severed from the constitutional portion. Severance of unlawful from lawful statutory provisions is a common and tested technique in the federal courts. *K Mart Corporation v. Cartier, Inc.*, —— U.S. ——, —— S. Ct. ——, 56 U.S.L.W. 4478, 4481 (U.S. May 31, 1988); *Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984). It ensures that the courts pay the proper respect due a co-equal branch of government and narrows the issues properly before the court. If WICO's title was the controlling question below it should have been specifically addressed.

C. Merely Requiring WICO to Apply for Permits Under the CZMA Does Not Substantially Impair a Contractual Relationship.

This Court has often stated that even though the Contract Clause appears to proscribe any contractual impairment at all, "the prohibition is not an absolute one and is

not to be read with literal exactness like a mathematical formula." *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398, 428 (1934). Only "substantial impairments" are barred, and the determination of what is a "substantial impairment" is done on a case-by-case basis. *United States Trust Company of New York v. New Jersey*, 431 U.S. 1, 21 (1977); *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 243-44 (1978); *Keystone Bituminous Coal Association v. DeBenedictus*, —— U.S. ——, 107 S. Ct. 1232, 1252 (1987).

Requiring WICO to comply with the CZMA is a "minimal alteration" of a contractual obligation because it does not limit WICO's ownership or prevent development of the filled lands. *Spannaus*, 438 U.S. at 245. Since every case must be individually considered to see if an alleged impairment is "substantial", appellant would urge the Court to closely examine the CZMA's permitting requirements as discussed above. The § 911 provisions found so burdensome by the Circuit Court are similar to and even less burdensome than the environmental impact statement provisions of the National Environmental Policy Act. 42 U.S.C.A. §§ 4321-4361. Appellant respectfully submits that the Repeal Act's effect of requiring WICO to comply with the CZMA—which every single other developer of filled land in the Virgin Islands must do—is not a "substantial impairment" of any contractual obligation of the government of the Virgin Islands may have.

D. Whatever Contract Rights WICO May Have Had Were Always Subject To Future Legislative Acts Because WICO Was Engaged In A Highly Regulated Industry.

The extent of a particular industry's prior regulation is part of this Court's threshold inquiry into whether an impairment is "substantial" or not. *Energy Reserves Group, Inc. v. Kansas Power and Light Company*, 459 U.S. 400 (1983). As stated by the Court there, "[i]n

determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past." *Id.* at 411.

The major objective of the Contract Clause is to protect legitimate business expectations in contractual relationships. *Spannaus*, 438 U.S. at 245. The parties to a contract have different expectations in a non-regulated industry than they do in one which is regulated, for "[w]hen he purchased into an enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic." *Veix v. Sixth Ward Bldg. and Loan Ass'n*, 310 U.S. 32, 38 (1940). In a regulated industry setting, the parties cannot reasonably anticipate that they will be free from future regulation, even future regulation upon the very topic which their contract concerns. The regulated industry exception thus serves public policy because "[o]ne whose rights, such as they are, are subject to state restriction, may not remove them from the power of the State by making a contract about them." *Hudson Water Co. v. McCarter*, 209 U.S. 349, 357 (1908).

There can be no question that land development in coastal areas, especially development of submerged lands, is and has been a heavily regulated industry. Besides the requirements of the Coastal Zone Management Act, coastal regulation has been subject to the dredge and fill permitting requirements of Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C.A. § 403, and Section 404 of the Federal Water Pollution Control Act, 33 U.S.C.A. § 1344. *See also California Coastal Comm'n v. Granite Rock Co.*, —— U.S. ——, 107 S. Ct. 1419 (1987). The United States Army Corps of Engineers and the Environmental Protection Agency have extensive control over coastal development under these statutes and the extensive underlying regulations. The Fish and Wildlife Service also regulates certain coastal developments under 16 U.S.C. § 661-666.

States and territories, including the Virgin Islands, also have a significant regulatory presence in coastal development. Title Twelve of the Virgin Islands Code has eight separate chapters applicable to coastal development. *See* Title VII V.I.C. chs. 1, 3, 5, 7, 10, 13, 15, 17 (1982). *See also* Ausness, *Land Use Controls in Coastal Areas*, 9 Cal. W.L. Rev. 391 (1973).

A contract is not impaired if a party is restricted to its reasonable expectations. *Enegry Reserves Group, Inc.*, 459 U.S. at 411. The Repeal Act simply added permitting conditions under the CZMA. There can be no "substantial impairment" where the only effect of a valid legislative act is to place additional and reasonable regulations upon a field that is already extensively regulated. Whatever impairment of any contract may have occurred as a result of the Repeal Act has been de minimis. Such a de minimis impairment does not breach the constitutional threshold.

II. EVEN ASSUMING THAT WICO HAS EXISTING CONTRACT RIGHTS AND THAT THOSE RIGHTS WERE SUBSTANTIALLY IMPAIRED, THE REPEAL ACT DOES NOT VIOLATE THE CONTRACT CLAUSE BECAUSE THE IMPAIRMENT WAS JUSTIFIED UNDER THE VIRGIN ISLANDS' RESERVED SOVEREIGN POWERS.

Legislative bodies possess inherent powers to regulate the safety and well-being of the citizens they represent. This police power is an inalienable function of a state or territorial government. The Court has long recognized that succeeding legislatures must retain plenary police power. As early as *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810) it was noted that "one legislature cannot abridge the powers of a succeeding legislature," and in *Stone v. Mississippi*, 101 U.S. 814 (1880) it was firmly established that certain powers of government could not be contracted away:

> The people, in their sovereign capacity, have established their agencies for the preservation of the public

> health and public morals, and the protection of public and private rights. These several agencies can govern according to their discretion, if within the scope of their general authority, while in power; *but they cannot give away or sell the discretion of those that are to come after them, in respect to matters the government of which, from the very nature of things, must 'vary with varying circumstances'*.

101 U.S. at 820. Yet this is exactly what has been forced upon the Government of the Virgin Islands by the court below As interpreted by the court below, the earlier legislature, which exempted WICO from the CZMA, contracted away "the discretion of those that are to come after them". It is not unreasonable for the current legislature to re-establish those reserved sovereign powers. Appellant submits that when this Court balances the "strictures of the contract clause with the 'essential attributes of sovereign power'. . . necessarily reserved by the States to safeguard the welfare of their citizens", it will find that even if a substantial impairment of a contractual relationship has occurred it is not a constitutionally invalid impairment. *Unted States Trust Co.*, 431 U.S. at 21 (citations omitted).

When a State has impaired its own contractual obligations, the Reserved-Powers Doctrine:

> requires a determination of the State's power to create irrevocable contract rights in the first place, rather than an inquiry into the purpose or reasonableness of the subsequent impairment. In short, the Contract Clause does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty.

Id. at 23. The police power and power of eminent domain were historically among the powers that could not be "contracted away", unlike the taxing and spending powers. *Id.* This distinction reflects the understanding that taxing and spending powers are discretionary, unlike the sovereign power to protect the health, safety and wel-

fare of the populace. Reserved sovereign powers are essential because legislative bodies "must possess broad power to adopt regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result." *Id.* at 22.

Of particular interest to the legitimacy of the Repeal Act is the fact that the "Contract Clause does not prohibit the States from repealing or amending statutes generally, or from enacting legislation with retroactive effects". *Id.* at 17. Only if a specific constitutional provision is implicated will repealing legislation be invalidated. The contract clause is not implicated here because of the Repeal Act's overriding public purpose.

A. To Prohibit The Legislature of the Virgin Islands From Applying The Reasonable Regulatory Requirements Of The CZMA To WICO's Waterfront Development Would Deny The Legislature One Of Its Most Essential Attributes Of Sovereign Power —The Ability To Preserve And Protect The Health, Safety, And Welfare Of Its Citizens.

This is not the type of case the framers of the Constitution had in mind when drafting the Contract Clause. The "primary focus" of the Contract Clause "was upon legislation that was designed to repudiate or adjust preexisting debtor-creditor relationships that obligors were unable to satisfy." *Keystone*, —— U.S. ——, 107 S.Ct. at 1251. This is a case involving a legislature that repealed the legislative acts of an earlier government that tied the hands of future legislatures from acting in the best interests of the health, safety, and welfare of the citizens of the Virgin Islands. The Government's spending and taxing powers are not implicated. It is the exercise of the police power that is at stake. WICO seeks to prevent this and all future governments from exercising their police power in regulating coastal development.

The right to control real estate development through environmental and other police power regulations is one

of the most commonly recognized "essential attributes of sovereign power". *Blaisdell*, 290 U.S. at 435. The second addendum is virtually a manifesto of denial of this sovereign power. Paragraphs 7, 11(a)(i)(y) and (z), 11(a)(ii), 11(b), 12(b), and 19(c) of the Second Addendum all specifically prohibit the application of the normal permitting and monitoring requirements of the CZMA to WICO's reclaimed harbor land. App. 159a, 164a, 165a, 166a, 172a.

In cases of this sort, where the primary purpose of the contract clause is not implicated but an essential attribute of a state or territory's sovereignty is, the Contract Clause must be subordinated to the police power. This case is identical in its analysis and impact to *Energy Reserves Group, Inc.* There the Court stated that "[t]o the extent, if any, the Kansas Act impairs ERG's contractual interest, the Kansas Act rests on, and is prompted by, significant and legitimate state interest." 459 U.S. at 416.

The reserved powers doctrine is also consistent with the presumption of validity reviewing courts give legislative enactments. *See United States Trust Co.*, 431 U.S. at 22-23; *East New York Savings Bank v. Hahn*, 326 U.S. 230 (1945). The lower court decisions in this action show a complete absence of any such due regard to the Virgin Islands' Legislative authority. The Circuit Court's opinion is particularly patronizing in tone. The reserved police power is not so easily subjugated to a real estate developer's wishes as that opinion seems to indicate. Viewed in its proper context, the Repeal Act is a valid legislative response to public concern over a reserved power that a prior legislature had unwisely purported to forego in perpetuity.

The fact that WICO is subject to other applicable federal and territorial laws under the Memorandum and subsequent addenda is irrelevant to a larger issue involved here. Executive and legislative decisions encom-

passed within Acts 3326 and 4700 emasculated future governments from applying the only unified body of coastal land development regulations in existence in the Virgin Islands. In a case such as this, "when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation. . . ." *Berman v. Parker*, 348 U.S. 26, 32 (1954).

The interests secured under the police power are dynamic and evolutionary in nature. They cannot be frozen to the particular interests of a given governmental body absent specific constitutional limitations. Appellant submits that those constitutional limitations are simply not present in this case. Moreover, the denial of its right to act in the best public good under its police power is an unwarranted and unwise limitation of the Virgin Islands' sovereign powers.

B. The Repeal Act is Based on a Significant and Legitimate Public Purpose and is a Reasonable and Appropriate Response to Development on Highly Sensitive Coastal Land.

Once a State has been found to significantly impair a contract, the State "must have a significant and legitimate public purpose behind the regulation. . . ." *Energy Reserves Group, Inc.*, 459 U.S. at 411. If a legitimate public purpose exists, the next step is "whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.' " *Id.* at 413, quoting *United States Trust Co.*, 431 U.S. at 22. The Repeal Act easily meets this standard.

"The requirement of a legitimate public purpose guarantees that the State is exercising its police power rather than providing a benefit to special interests". *Energy Reserve Group, Inc.*, 459 U.S. at 412. The Repeal Act was

enacted solely to reassert the legislature's police power authority over a sensitive coastal development. While directed at WICO's lands in particular, the effect of the Repeal Act was simply to bring WICO within the same land use regulations covering every other developer in the Virgin Islands. The legislative discussion of the Repeal Act proves its legitimacy. The primary concern expressed during debate was whether the legislature had given up its police power. App. 180a. This is the most basic of legitimate public purposes.

The reasonableness of a legislative act which simply brings a coastal developer within the regulatory realm with which all other developers must comply cannot be questioned. It does not affect WICO's purported ownership of the reclaimed lands. It simply guarantees that the health, safety and welfare of all citizens of the Virgin Islands—including WICO's—will be protected by the constraints of the Coastal Zone Management Act.

The Repeal Act was a necessary legislative response to the perils of unsupervised coastal development that could not have been accomplished through any alternate, less drastic measure. *United States Trust Co.*, 431 U.S. at 29-30. No action short of the Repeal would have allowed the government of the Virgin Islands to reassert its right and power to protect its citizens from potential ill effects of WICO's development, the nature and extent of which WICO has refused to specify. The fairest and simplest way of bringing WICO within the same standards facing all other coastal developers is through the effective enforcement of § 911 of the CZMA as required by the Repeal Act.

CONCLUSION

The Repeal Act does not substantially impair any contractual obligations of the Virgin Islands. Its sum and substance is merely to bring WICO within the reasonable environmental permitting requirements of the CZMA. It has no effect on title and should not be construed in such a way that it does. There can be no constitutional infringement where the only result of a valid legislative enactment is to bring a coastal real estate developer within the same environmental constraints as any other developer.

Yet even if there were some substantial impairment as a result of the Repeal Act there still would be no constitutional violation. The protection of the health, safety and welfare of the Citizens of the Virgin Islands is an inalienable right and power of each succeeding legislature. This reserved sovereign power cannot be contracted away in perpetuity.

For all of the foregoing reasons, this Court should accept jurisdiction of this appeal.

Respectfully submitted,

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87-2132
87-2133

Nos. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

LEGISLATURE OF THE VIRGIN ISLANDS,
Appellant,

and

HELEN GJESSING, Individually and as President of Save Long Bay Coalition, Inc., LEONARD REED, Individually and as President of Virgin Islands Conservation Society, Inc., KATE STULL, Individually and as President of League of Women Voters of V.I., Inc., LUCIEN MOOLENAAR, Individually and as President of Virgin Islands 2000, Inc., RUTH MOOLENAAR, Individually and as Director of St. Thomas Historical Trust, Inc.,
Appellants,

v.

WEST INDIAN COMPANY, LTD.,
Appellee,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,
Appellee.

On Appeal from the United States Court of Appeals for the Third Circuit

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JOINT APPENDIX TO JURISDICTIONAL STATEMENT

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INDEX

INDEX—Continued

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 87-3369, 87-3370, 87-3371, 87-3372

THE WEST INDIAN COMPANY, LTD.,
Appellee

vs.

GOVERNMENT OF THE VIRGIN ISLANDS, LEGISLATURE OF THE VIRGIN ISLANDS (Intervenor), HELEN GJESSING (Intervenor), LEONARD REED (Intervenor), KATE STULL (Intervenor), LUCIEN MOOLENAAR (Intervenor), RUTH MOOLENAAR (Intervenor),
Appellants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that HELEN W. GJESSING, Individually and as President of the Save Long Bay Coalition, Inc., KATE STULL, Individually and as President of the League of Women Voters, Inc.; RUTH MOOLENAAR, Individually and as Director of the St. Thomas Historical Trust, Inc., LEONARD REED, Individually and as President of the Virgin Islands Conservation Society, Inc., and LUCIEN MOOLENAAR, Individually and as President of the Virgin Islands 2000, Inc., appellants in this case, hereby appeal to the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Third Circuit dated March 31, 1988, affirming the judgment of the United States District Court for the District of the Virgin Islands dated April 13, 1987.

This appeal is taken pursuant to Title 28 U.S.C. § 1254 (2).

Dated: April 20, 1988

Attorneys for Appellants

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/s/ Brenda J. Hollar
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/s/ Judith L. Bourne
JUDITH L. BOURNE, ESQ.

AFFIDAVIT OF SERVICE

I, LORECIA N. KRIGGER, being duly sworn do hereby depose and say that on this 20th day of April, 1988, I caused a true and exact copy of the foregoing Notice of Appeal to be served, by hand delivery, on Maria T. Hodge, Esq. for West Indian Company, Ltd., 40B Beltjen Road, St. Thomas, USVI 00802; Godfrey deCastro, Attorney General of the V.I., for the Executive Branch of the Government of the U.S. Virgin Islands, at Department of Justice, Post Office Square, St. Thomas, USVI 00802; and on Rhys S. Hodge, Esq. for the Legislative Branch of the Government of the U.S. Virgin Islands, at #19 Norre Gade, St. Thomas, USVI 00802.

/s/ Lorecia N. Krigger
LORECIA N. KRIGGER

SWORN AND SUBSCRIBED TO BEFORE ME THIS 20th DAY OF APRIL, 1988.

/s/ David A. Bornn
Notary Public

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 87-3369, 87-3370, 87-3371, 87-3372

THE WEST INDIAN COMPANY, LTD.,
Appellee

v.

GOVERNMENT OF THE VIRGIN ISLANDS, LEGISLATURE OF THE VIRGIN ISLANDS (Intervenor), HELEN GJESSING (Intervenor), LEONARD REED (Intervenor), KATE STULL (Intervenor), LUCIEN MOOLENAAR (Intervenor), RUTH MOOLENAAR (Intervenor),
Appellants

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Appellant Legislature of the Virgin Islands in this case, hereby appeals to the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Third Circuit dated March 31, 1988, affirming the judgment of the United States District Court for the District of the Virgin Islands dated April 13, 1987.

This appeal is taken pursuant to Title 28 U.S.C. § 1254 (2).

Dated: June 13, 1988

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By /s/ Fred P. Bosselman
FRED P. BOSSELMAN, ESQ.

AFFIDAVIT OF SERVICE

I, Fred P. Bosselman, being duly sworn do hereby depose and say that on this 13th day of June, 1988, I caused a true and exact copy of the foregoing Notice of Appeal to be served by hand delivery on Maria T. Hodge, Esq. for West Indian Company, Ltd., 40B Beltjen Road, St. Thomas, USVI 00802; Godfrey deCastro, Attorney General of the V.I., for the Executive Branch of the Government of the U.S. Virgin Islands, at Department of Justice, Post Office Square, St. Thomas USVI 00802; and on David Bornn, Esq. at No. 8 Norre Gade, St. Thomas, V.I. 00802, Judith Bourne, Esq. at 14B Norre Gade, St. Thomas, USVI 00802 and Brenda Hollar, Esq. at 2A&2B Kongens Gade, St. Thomas, USVI 00802.

/s/ Fred P. Bosselman

SUBSCRIBED AND SWORN to before me this 12th day of June, 1988.

/s/ William J. Turberville II
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Commission Expires: Oct. 2, 1989

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 87-3369, 87-3370, 87-3371, 87-3372

THE WEST INDIAN COMPANY, LTD.

vs.

GOVERNMENT OF THE VIRGIN ISLANDS

(1) LEGISLATURE OF THE VIRGIN ISLANDS (Intervenor)
(2) HELEN GJESSING (Intervenor)
(3) LEONARD REED (Intervenor)
(4) KATE STULL (Intervenor)
(5) LUCIEN MOOLENAAR (Intervenor)
(6) RUTH MOOLENAAR (Intervenor)

LEGISLATURE OF THE VIRGIN ISLANDS,
intervenor above named,
Appellant in No. 87-3369

HELEN W. GJESSING, Individually and as President of the Save Long Bay Coalition, Inc.,
Appellant in No. 87-3370

KATE STULL, Individually and as President of the League of Women Voters, Inc.; and

RUTH MOOLENAAR, Individually and as Director of the St. Thomas Historic Trust, Inc.,
Appellants in No. 87-3371

LEONARD REED, Individually and as President of the Virgin Islands Conservation Society, Inc., and
LUCIEN MOOLENAAR, Individually and as President of the Virgin Islands 2000, Inc.,
Appellants in No. 87-3372

On Appeal from the District Court
of the Virgin Islands (St. Thomas)
(D.C. Civil No. 86-293)

Argued December 7, 1987

BEFORE: GIBBONS, *Chief Judge*,
STAPLETON, and MANSMANN, *Circuit Judges*

(Opinion filed March 31, 1988)

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OPINION OF THE COURT

STAPLETON, *Circuit Judge*:

The intervenors in this action, including the present Virgin Islands legislature and the officers of various interested citizen groups, appeal from a summary judgment in favor of, and grant of a permanent injunction to, the West Indian Co., Ltd. (WICO). The central issue presented is whether a 1982 agreement between WICO and the Government of the Virgin Islands, ratified by the legislature then sitting, should be considered contractually binding on the present legislature. The district court held that it should; the intervenors contend that it should not. Because we agree with the district court's conclusions that the 1982 agreement is a contract and that the present legislature's attempt to cancel it by means of the Repeal Act is a violation of the contract clause of the United States Constitution, incorporated into Virgin Islands law by § 3 of the Revised Organic Act, we will affirm.

I.

WICO is a Dutch-owned Virgin Islands corporation. In 1913, Denmark, then the sovereign of the Virgin Islands, granted WICO, then a Dutch entity, rights in certain parts of the Long Bay area of the St. Thomas

harbor on Charlotte Amalie. This grant was evidenced by two letters to WICO from the Danish Ministry of Finance, dated January 18, 1913 and April 16, 1913.[1] Of these letters, the first was the more significant; it provided that when designated submerged areas of the harbor had been reclaimed by WICO, the company would acquire free and unrestricted ownership of the land. No time limitations restricted WICO's reclamation rights under this original grant.

In 1914, WICO built a dock and harbor basin in the area covered by the grant, leaving it with reclamation rights in 42 additional acres. Although it did business in the Virgin Islands continuously over the years, using its dock and harbor basin, WICO did not proceed with any further reclamation until 1986.

In 1917, Denmark ceded the Virgin Islands to the United States. WICO's rights were specifically preserved by § 3 of the Convention of Cession, which read:

> 4) The United States will maintain the following grants, concessions and licenses, given by the Danish Government, in accordance with the terms on which they are given:
>
> a. The concession granted to 'Det vestindiske Kompagni' (the West Indian Company) Ltd. by the communications from the Ministry of Finance of January 18th 1913 and of April 16th 1913 relative to a license to embank, drain, deepen and utilize certain areas in St. Thomas Harbor, and preferential rights as to commercial, industrial or shipping establishments in the said Harbor.

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[1] The Danish Government had originally granted a similar concession to a consortium of Dutch businessmen. The consortium proved unable to meet the conditions of its concession, however, and its rights were transferred by the Danish Government to WICO in the 1913 grant, with certain modifications.

App. at 30, 32. Before signing the Convention, the United States asked Denmark whether the grant to WICO was in perpetuity; Denmark responded that it was, and that there was no limitation as to the time within which WICO had to exercise its rights.[2]

No further developments of significance took place until 1968, when the United States Department of the Interior filed suit in federal district court in the Virgin Islands, seeking to quiet title to the area of WICO's Danish grant and secure a declaratory judgment that WICO's treaty rights had lapsed. WICO defended this action, arguing that its treaty rights to reclaim and take title were vested and in perpetuity. While this suit was pending, the Danish Government sent a formal diplomatic note, dated June 25, 1970, to the United States Government, stating that WICO's treaty rights had originally been granted by Denmark without condition as to time and requesting that those rights be respected.

WICO proposed a settlement of the suit to both the Government, although the latter was not formally a party, and negotiations began. The parties to the negotiations included the United States Government, the Virgin Islands Government, WICO, and other private parties with interests in the harbor. The negotiations were successfully concluded in 1972 with a settlement agreement, the substance of which was that WICO would surrender reclamation rights to 12 out of the 42 acres at issue and the United States and Virgin Islands Governments would recognize WICO's right to reclaim and obtain title to the remaining 30 acres. A number of other obligations were also assumed by WICO as conditions of the settlement; for example, WICO agreed to

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[2] The Danish Government also informed the United States at this time that because WICO had begun to exercise its rights by doing some reclamation, WICO's rights had vested under Danish law.

fill in an extra 2.5 acres for public parkland and transfer it to the Virgin Islands Government, and to fill certain waterfront land so as to enable the Government to widen the shoreline highway from two to four lanes. The conditions of the settlement agreement were embodied in a document called the Memorandum of Understanding. The parties included in the Memorandum a statement of reasons why they believed the conveyance to WICO would further the public interest, including not only the above benefits but also the expected increase in employment, improvement of facilities for tourism, and elimination of the "possible cloud over the future of St. Thomas Harbor" posed by WICO's Danish rights.

Because at that time the United States held title to the submerged lands surrounding the Virgin Islands, the parties to the settlement considered it necessary to arrange a two-step procedure for transferring title to the 30 acres to WICO after reclamation: the United States Government would convey to the Virgin Islands Government, and the Virgin Islands Government to WICO. The Memorandum was not particularly clear, however, on just when the transfer of title was to be accomplished. It provided that after specified conditions had been met, the parties would meet at a Closing to exchange various documents; after the Closing, further conditions would have to be met, mainly the completion of reclamation within specified time limits, before WICO would actually receive title. "Once reclaimed," § 15(b) of the Memorandum states, "the areas filled shall belong to WICO in fee simple . . . provided that WICO is then in compliance with Sections 2 and 8 of this Agreement requiring WICO to fill and provide land for the V.I. Government." Section 15(b) of the Memorandum also contains the following provision:

> Except as otherwise specifically provided herein, this Agreement shall be binding upon and shall inure to

> the benefit of the parties, their successors and assigns.

When the settlement had been reached, public hearings were held. The agreement then went to the Virgin Islands legislature, the Ninth Legislature, for ratification, which was forthcoming in the form of Act No. 3326, passed on October 11, 1972 and formally approved by the Governor on October 30, 1972. Because the Virgin Islands Government was not a party to the underlying suit, its ratification of the settlement took the form of a recommendation to the United States Government to accept and implement the settlement. There is no evidence that the Ninth Legislature acted hastily or without full information and adequate opportunity for public comment in approving the settlement agreement.[3]

The Memorandum of Understanding was signed on October 3, 1973 by the United States Government, the Virgin Islands Government, WICO, and the other interested private parties. The Memorandum was filed with the district court, and the Department of the Interior's action was stayed sine die pending completion of the various prerequisites to closing and ultimate transfer of title specified in the Memorandum.

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[3] In fact, the opposite appears true. One of the intervenors, discussing the passage of Acts No. 3326 and 4700, asserts that:

> If any records were preserved, it [sic] would readily reflect that the League of Women Voters of the Virgin Islands and the Virgin Islands Conservation Society have always made appearances and have voiced strong objection to any dredging in St. Thomas Harbor . . . . Despite the vocal opposition to the dredging . . . prior legislation was nevertheless enacted . . . .

Gjessing Br. at 23-24. Others of the intervenors state that from the time of the proposed settlement agreement on, "vigorous public opposition has been voiced by individuals and citizens groups." Moolenaar/Reed Br. at 10.

The preconditions set by the Memorandum to transfer of title were never fulfilled; the order of events envisioned by the drafters of the Memorandum was altered in several respects. First, in October 5, 1974, the United States passed the 1974 Territorial Submerged Lands Act, 48 U.S.C. §§ 1701-1708 (1982 & 1987 Supp.). Under this law,

> [s]ubject to valid existing rights, all right, title, and interest of the United States in lands permanently or periodically covered by tidal waters . . . and in artificially made, filled in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters, are hereby conveyed to the governments of Guam, the Virgin Islands, and American Samoa, as the case may be, to be administered in trust for the benefit of the people thereof.

48 U.S.C. § 1705(a). To accommodate this change in circumstances, WICO drafted and presented to the Virgin Islands Government a First Addendum to the Memorandum, dated October 28, 1975. This Addendum simply eliminated the first of the two steps of the title transfer procedure. The executive branch of the Virgin Islands Government agreed to this change, and the Virgin Islands Attorney General, considering the change purely procedural, determined that there was no need to submit the First Addendum to the legislature for approval.

A second departure from the expected was the enactment, in October of 1978, of the Virgin Islands Coastal Zone Management Act (CZMA), 12 V.I.C. §§ 901-914 (1982 & 1987 Supp.). The general purpose of the Virgin Islands CZMA was to set up a comprehensive program for the management, conservation, and orderly development of the coastal area; the main method of implementing this program was a permit system run by the Coastal Zone Management Commission, a new unit of the Department of Conservation and Cultural Affairs. The

thrust of the CZMA is thus to require those wishing to engage in new development of the coastal area, whether on private or public lands, to obtain a permit to do so from the Virgin Islands Coastal Zone Management Commission, Federal permits for coastal area development in the Virgin Islands must often be obtained in addition to Virgin Islands permits.[4]

Section 910 of the CZMA sets forth conditions regarding when a Virgin Islands coastal zone permit is required and may be granted, and outlines the procedures for application. These conditions and procedures apply to both privately- and publicly-held land. However, § 911 imposes stringent additional restrictions and conditions on use or development of public lands. The most important of these additional restrictions, for purposes of this case, are those of §§ 911(a) and (d). These sections forbid conveyance of publicly-held coastal zone areas to private parties; they require a permit or lease for any development or occupancy of such areas, and limit the term of such permit or lease to a maximum of 20 years.[5] Coastal zone permits for any use of public

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[4] In this case, for example, WICO's operations fall within 33 U.S.C. § 403, requiring federal approval for any excavation or fill within navigable waters, and 33 U.S.C. § 1344, requiring federal permits for discharge of dredged or fill material into navigable waters, and possibly within 33 U.S.C. § 1341, requiring federal permits for any discharge into navigable waters. Section 910(g) of the Virgin Islands CZMA states that where any development or occupancy in the coastal zone "require separate and distinct approval from the United States Government or any agency . . . thereof," the Virgin Islands "coastal zone permit shall be contingent upon receipt of all other such permits and approvals, and no such development of occcupancy shall commence prior to receipt of all such permits and approvals."

[5] A coastal zone permit that includes an occupancy or development permit, § 911(d)(1) provides, "shall not constitute a property right and shall be renewable only if the requirements of this section . . . are satisfied"; a coastal zone permit that includes an occupancy or development lease, § 911(d)(2) provides, "shall only

lands must provide for payment of rental fees; if the permit authorizes dredging, the permit must provide for reclamation fees. § 911(f)(1), (2). Fee schedules are set by the Coastal Zone Management Commission. § 911 (f)(3). A coastal zone permit for public lands may be modified or revoked during its term, upon a determination by the Governor that revocation or modification is in the public interest and necessary to prevent significant environmental damage. § 911(g). The CZMA is careful to avoid retroactive effect by specifying that

> [n]othing herein contained shall be construed to abridge or alter vested rights obtained in a development in the first tier coastal zone prior to the effective date of this chapter or any occupancy permit or lease of trust lands or other submerged or filled lands issued prior to the effective date of this chapter . . . .

§ 905(g).[6]

After passage of the CZMA, WICO promptly notified the Virgin Islands Legislature and Governor that it would consider application of the CZMA to it to be a material breach of the Memorandum of Understanding. Negotiations began, and by September of 1981 a compromise had been worked out. The basic terms of this bargain, embodied in a Second Addendum to the Memorandum of Understanding,[7] were that WICO would give

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be granted for a particular parcel of filled land and for a nonrenewable lease period of not more than 20 years."

[6] The "first tier" is defined as "that area extending landward from the outer limit of the territorial sea . . . to distances inland as specified in the maps incorporated by reference . . . ." § 902(r). WICO's grant area would apparently fall within the first tier.

[7] The Second Addendum amended and restated the Memorandum of understanding as amended by the First Addendum. As it incorporates the entire agreement of the parties, no reference back to the Memorandum is necessary.

up about half of its remaining 30-acre claim in exchange for the Virgin Islands Government's promise to convey to WICO title to the 15 acres left.[8] There are many additional conditions in the Second Addendum. WICO agreed, for example, to specified zoning restrictions and specified limited uses, to a height restriction of three stories, and to reserve a certain percentage of its area for "usable open space." § 11(b). These agreed-upon restrictions, however, apply only to development commenced within ten years of reclamation and completed within 15 years of reclamation; any development not commenced or completed within these time limits, and "any development beyond that explicitly contemplated by this Agreement," is controlled instead by the "then current laws," the CZMA or its future equivalent. § 12(a). In addition, the Second Addendum provides that "as to any matters not specifically covered by the Agreement, such as utilities, siting, performance standards, design and landscape, WICO shall be subject to the requirement of a Coastal Zone Management permit." § 12(b). The Virgin Islands Government, for its part, agreed in the Second Addendum that WICO was not to be subject to the charges mandated by § 911 for rental of or removal of dredge fill from publicly-held lands, and that WICO was to be able to use its land free of the use or rental charges imposed by § 911 on publicly-held land. § 19(e).

Like the Memorandum, the Second Addendum provides that after certain conditions are met, a Closing is to be held, at which conveyances and other documents are to be exchanged by the parties; transfer of title is accomplished after further conditions are met, most importantly completion of reclamation. Once WICO begins reclamation, as it has done, time limits within which

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[8] According to the intervenors, the eastern anchorage of St. Thomas harbor, the basin in which WICO's 15 acres is located, is about 400 acres. Moolenaar/Reed Br. at 3.

it must finish apply. The Second Addendum follows the Memorandum in stating that when the specified acreage has been reclaimed, "WICO shall have title to and ownership of the areas filled . . . provided that WICO is then in compliance with Section 2 of this Agreement requiring WICO to fill and provide land for the V.I. Government," and that "[e]xcept as otherwise specifically provided herein, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns." § 16(b). The Second Addendum also specifies that nothing contained in it is to affect the rights of the United States or Virgin Islands Governments to acquire by eminent domain or condemation the lands covered by the Addenum. § 19(a).

A condition of the Second Addendum was that the CZMA be amended to exempt WICO from its provisions insofar as the Addendum replaced or nullified application of those provisions. The CZMA was duly amended by the Fourteenth Legislature on April 7, 1982 by Act No. 4700. Act No. 4700 added the following paragraph to the Coastal Zone Act:

> (5) any treaty right, grant, or concession which was vested in any party prior to the date of enactment of this chapter and which in whole or in part has been expressly recognized by statute, court order, or lawfully executed agreement as binding on the Government of the Virgin Islands, whether such recognition precedes or succeeds the date of enactment of this chapter, and subject to any agreements or Memorandums of understanding pertaining to such right, grant, or concession which have been or may hereafter be ratified by law.

12 V.I.C. § 905(i)(5). In addition, Act No. 4700 ratified the Second Addendum "with the full force and effect of law" provided that "the Governor and Departments of the Government of the Virgin Islands, and all instru-

mentalities thereof are authorized and directed, within the scope of their jurisdiction, to execute the terms of such Agreement." App. at 116. Again, as the intervenors themselves maintain, there was no lack of opportunity for public comment on the Second Addendum and on Act No. 4700. *See supra* note 6.

On April 16, 1984, the federal court, acting sua sponte, entered an order pursuant to Fed.R.Civ.P. 41(b) dismissing for lack of prosecution the 1968 action by the Department of the Interior. No appeal was taken from this dismissal, and no motion to reopen has ever been filed.[9] The intervenors, in connection with the present action, unsuccessfully moved for relief from the dismissal.

After the Second Addendum had been ratified and the CZMA amended, WICO began the lengthy process of otbaining permits for reclamation from the United States Army and the Virgin Islands Coastal Zone Management Commission. On March 9, 1983, WICO submitted an application for a federal permit to dredge and fill; WICO received, on February 14, 1985, a permit which would allow it to fill 7.5 acres, but on the condition that archaeological surveys be done prior to the start of any dredging operations.[10] A Virgin Islands permit was

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[9] The intervenors' claim that the U.S. Department of Justice "protested the dismissal as error" is not well founded. The October 6, 1984 letter sent by the U.S. Attorney to the district court on this matter was "solely for [the court's] information and for no other purpose"; it informed the court that the Justice Department was in touch with the Interior Department

> to determine whether the federal government has any present interest in reopening the litigation. When the Department of the Interior has completed its review and consideration of this matter, this office will take any appropriate action.

App. at 699. No further action was taken.

[10] The Army permit only covers WICO's dredging and filling. It notes as "special conditions" not only the requirement that archae-

granted to WICO without substantial additional study, as the Virgin Islands Government considered itself bound by the Second Addendum and Act No. 4700 to allow WICO to proceed pursuant to the terms and limitations of that agreement. After doing the required archaeological surveys, WICO began dredging in June of 1986.

WICO's dredging operations created an immediate public uproar. In response, the Sixteenth Legislature called itself into special session and on July 9, 1986 approved a bill to repeal Acts No. 3326 and 4700. The Governor vetoed the bill, deploring the action to abrogate the "long-standing agreement to permit the limited further development of an already heavily developed harborfront at Long Bay." App. at 131. The Legislature, again in special session, overrode the veto on August 11, 1986 to make the Repeal Act, Act No. 5188, law. Section 1 of the Repeal Act rescinds the two earlier measures, Acts No. 3326 and 4700, in their entirety; Section 2 provides that

> Any and all activities that are conducted in Long Bay by the West Indian Company, Ltd., shall comply with the provisions of the Coastal Zone Management Act, Title 12, Chapter 21, Virgin Islands Code. Any permit for the development or occupancy of the submerged lands in Long Bay must be sent to the Governor for approval and the Legislature for ratification.

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ological surveys be conducted prior to dredging, but also that another permit application be submitted to the Department of the Army for review prior to the construction by WICO of a marina on the filled land. The Army permit also repeats the requirement of the Second Addendum that the final plans for proposed development over the filled area be submitted to the Virgin Islands Department of Cultural and Conservation Affairs for review of siting, design, and the like.

App. at 130.[11] On August 18, 1986, the Virgin Islands Department of Conservation and Cultural Affairs issued a stop order to WICO on the ground that the permit already issued to WICO was no longer valid in light of the Repeal Act.

On August 14, 1986, WICO filed suit in the district court in the Virgin Islands seeking a temporary restraining order and a preliminary injunction against enforcement of the Repeal Act. A hearing on this motion was held on August 19, 1986, and a temporary restraining order forbidding any interference with WICO's dredging was granted at that time. A hearing on the preliminary injunction was scheduled for August 26, 1986.

At the August 14th hearing, the Virgin Islands Attorney General made a special appearance to advise the court that the executive branch of the Virgin Islands Government intended to decline to defend the suit, and to request the court's permission for the executive not to appear in the case. Because the executive branch considered the Repeal Act invalid, the Attorney General argued, appearance would violate Fed. R.Civ.P. 11 and constitute a breach of the Canon of Ethics. The court allowed the executive branch to bow out, not because of the ethics-based arguments but because it believed that for a federal court to force the executive to defend would constitute unwarranted interference in the political affairs of the Virgin Islands Government. The court then permitted the Legislature, and officers of several citizen groups supporting the Repeal Act. to intervene.[12] The citizen intervenors promptly moved to

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[11] The CZMA mandates that CZMA permits for development or occupancy of publicly-held coastal areas be sent to the Governor for approval and the legislature for ratification; if the legislature is not in session, the Committee on Conservation, Recreation, and Cultural Affairs may ratify a permit. § 911(e).

[12] These officers include Helen Gjessing, president of Save Long Bay Coalition, Inc.; Lucien Moolenaar, president of Virgin Islands

compel the Attorney General to hire outside counsel to represent the Virgin Islands Govrnment in the suit; this motion was denied. The citizen intervenors then filed cross-claims against both the executive and legislative branches of their government, charging that the Government's agreement to the Memorandum and Addenda constituted a breach of fiduciary duty and a violation of the citizens' constitutional rights. The claim against the legislative branch has since been dropped, but the citizen intervenors' claim against the executive branch remains. The citizen intervenors assert that the executive branch, for various reasons, should be required to pay the citizens' attorneys' fees and costs, plus any costs awarded to WICO.

At the August 26th hearing, the district court found that WICO had established a likelihood that it would prevail on the merits of its claim that the Repeal Act was an unconstitutional violation of the contract clause, that WICO would suffer irreparable harm absent issuance of an injunction, and that an injunction would be in the public interest. Based on these findings, the district court granted WICO's request for a preliminary injunction. *West Indian Co., Ltd. v. Government of the Virgin Islands*, 643 F. Supp. 869 (D.V.I. 1986). On appeal, this court, employing the narrow scope of review applicable in appeals from the issuance of a preliminary injunction, affirmed the decision of the district court. *West Indian Co., Ltd. v. Government of the Virgin Islands*, 812 F.2d 134 (3d Cir. 1987) (per curiam).

The district court granted summary judgment to WICO on April 13, 1986, converting the preliminary injunction into a permanent injunction. *West Indian Co.*,

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2000, Inc.; Ruth Moolenaar, director of the St. Thomas Historical Trust, Inc.; Leonard Reed, president of the Virgin Islands Conservation Society, Inc.; and Kate Stull, president of the League of Women Voters of the Virgin Islands, Inc. All intervene in their personal capacities as well as their capacities as corporate officers.

Ltd. v. Government of the Virgin Islands, 658 F. Supp. 619 (D.V.I. 1987).

The intervenors appeal from the grant of summary judgment and a permanent injunction. Making substantially the same arguments here as before the district court, they contend, *inter alia*, that United States courts lack jurisdiction over this matter; that summary judgment was inappropriate; that there is no contract and thus no contract clause violation; that the public trust doctrine barred formation of a valid contract to convey title to any submerged land to WICO; and that the Repeal Act is a valid use of police power and, as such, withstands WICO's contract clause challenge. The intervenors also appeal from dismissal of their cross-claim against the executive branch. WICO reasserts on appeal both the contract clause argument with which it prevailed on summary judgment and a takings claim not reached by the district court.

II.

The intervenors challenge the exercise of subject matter jurisdiction by the district court, arguing that all rights of WICO arise under the 1917 Convention of Cession between the United States and Denmark and are therefore subject to the Convention's provision for dispute resolution.[13] We disagree. What is at issue in this action is not the nature of the original grant to WICO, preserved in the Convention of Cession, but rather the nature of the agreements negotiated between WICO and the Virgin Islands Government.[14] The determinative

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[13] The Convention provides that disputes unreasonable by negotiation between Denmark and the United States are to be brought before the Permanent Court of Arbitration at the Hague, which is still extant.

[14] We do not accept the intervenors' argument that the Memorandum and Second Addendum are invalid as attempts to modify the Convention of Cession. The Convention created a right in

nature of the recent agreements, in particular the Second Addendum, will be evident from our discussion of the merits; it is also evident, we think, simply from the Repeal Act itself, which has nothing to do with the Convention of Cession but is directed to negating the Memorandum and Second Addendum. Constitutional issues arising in connection with the status of agreements made between a Virgin Islands corporation and the Virgin Islands Government, and dealing with rights to and uses of land located within the Virgin Islands, clearly fall within the subject matter jurisdiction of the District Court for the Virgin Islands. 48 U.S.C. § 1612; 4 V.I.C. § 32. Therefore, the district court properly exercised jurisdiction, and there is appellate jurisdiction in this court pursuant to 28 U.S.C. §§ 1291 and 1294(3).

III.

In determining whether a grant of summary judgment was appropriate, we must determine whether, viewing all reasonable inferences that may be drawn from the evidence in the light most favorable to the intervenors, no genuine issue of material fact exists and WICO is entitled to summary judgment as a matter of law. *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976), *cert. denied* 429 U.S. 1038 (1977). The Supreme Court recently offered the following guidance for identification of material facts:

> As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of

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WICO to have the United States Government respect its original grant; surely WICO and the United States Government (or its successor in interest, the Virgin Islands Government) can subsequently negotiate a valid contract of settlement concerning the extent of WICO's rights.

> summary judgment. Factual disputes that are irrelevant or unnecessary will not be countered.

Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2510 (1987).

In this case, the intervenors argue that they are entitled to summary judgment, and that sumary judgment was improperly granted to WICO because material facts are in dispute. Items listed as disputed material facts by the intervenors include the proper translation and meaning of the terms used in the 1913 letters from the Danish Government to WICO; the intent of the parties to the 1913 letters as to the length of the grant of rights to WICO; whether the United States failed to assert the public's equitable interest in the area claimed by WICO; and whether the area claimed by WICO was being used for public trust purposes prior to WICO's dredging. As will be clear from our analysis of the substantive law applicable in this matter, disputes over these and other items claimed by the intervenors to be material facts are not "disputes over a fact that might affect the outcome of the suit under the governing law" and thus do not preclude summary judgment under the standard set forth by the Court in *Anderson.*

IV.

We now turn to the merits of this case. The first and most important of the issues we confront is whether or not there is a contract between WICO and the Virgin Islands Government, and whether the Repeal Act impairs that contract so as to conflict with the bar set by Article I, § 10, cl. 1 of the United States Constitution, incorporated by § 3 of the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1561, against any law "impairing the Obligation of Contracts."

In discussing this issue, the Supreme Court has said:

> In general, a statute is itself treated as a contract when the language and the circumstances evince a

> legislative intent to create private rights of a contractual nature enforceable against the State.

United States Trust Co. v. New Jersey, 431 U.S. 1, 17 n.14 (1977).[15] We therefore look to the language and circumstances of the agreements between the Virgin Islands Government and WICO to determine whether they evince the requisite intent to create private contractual rights in WICO enforceable against the Virgin Islands Government.

We begin with, and need go no further back than, the most recent agreement, the Second Addendum. Negotiated and ratified after title to the submerged lands had been transferred to the Virgin Islands and after the Virgin Islands CZMA had been passed, the Second Addendum is, in our view, the definitive agreement between WICO and the Virgin Islands Government. It is clear that both sides compromised legitimate claims in reaching this agreement. Clearly the Virgin Islands Government achieved significant benefits for itself. WICO traded a full half of its claimed acreage for definite recognition of its right to obtain title to the remainder, an area of only 15 acres or so. WICO also assumed a number of other obligations, and agreed to many conditions on the use and development of its land. The Second Addendum contains time

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[15] The Virgin Islands Government, although it remains an unincorporated territory lacking the sovereignty of a state, is treated like a state government as far as its contractual obligations are concerned. We have often recognized that the Revised Organic Act conferred upon the Virgin Islands "attributes of autonomy" similar though not equal to the full autonomy enjoyed by state governments. *See, e.g., Water Isle Hotel v. Kon Tiki St. Thomas, Inc.*, 795 F.2d 325, 327 (3d Cir. 1986); *In re Hooper's Estate*, 359 F.2d 569, 578 (3d Cir. 1966), *cert. denied*, 385 U.S. 903; *Harris v. Municipality of St. Thomas and St. John*, 212 F.2d 323, 327 (3d Cir. 1954). The attributes of autonomy relevant to this contract dispute are the authority to enter into binding contracts and to sue and be sued on those contracts; that the Virgin Islands Government has this authority cannot be gainsaid. *See* 48 U.S.C. § 1541.

limits within which WICO bound itself to act, and limits the number of years during which new development by WICO is not covered by the normal requirements of the CZMA. WICO has fully complied with, and has acted in reliance on, the Second Addendum; until pressure by the public in 1986 led to the passage of the Repeal Act, the Virgin Islands Government also acted in accordance with the Second Addendum and considered it binding.[16] In addition to these circumstances, which seem to us to indicate legislative intent to enter into a binding contract with WICO, the language with which the Second Addendum concludes must not be overlooked:

> Except as otherwise specifically provided herein, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

§ 16(b). Act No. 4700, the measure with which the Virgin Islands legislature ratified the Second Addendum after extensive debate and opportunity for public comment, not only amended the CZMA to recognize WICO's rights, but gave the Addendum "the full force and effect of law" and directed all officials and instrumentalities of the Virgin Islands Government to execute the Addendum's terms.

We conclude that there is unambiguous evidence here of legislative intent to create enforceable private rights in WICO and that the Second Addendum was intended by

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[16] We share the following view expressed by the district court:

> [A]s of August, 1986, three successive elected governors, their respective attorneys general, and two separate Legislatures of the Virgin Islands have recognized WICO's rights to dredge and reclaim certain submerged lands in the harbor Charlotte Amalie. The various officials described above successfully negotiated limits with respect to both acreage and time as to WICO's rights, and gained important concessions in favor of the territory. The reason for this case is that the Sixteenth Legislature, now sitting, takes issue with the validity of the actions undertaken by the territorial officials above described.

643 F. Supp. at 873.

all concerned to be a binding contract between WICO and the Virgin Islands Government.[17]

V.

The intervenors contend that the public trust doctrine prevented the formation of any valid contract by Virgin Islands officials to convey submerged tideland to WICO. They make two arguments in support of this contention: first, that because the 1974 U.S. Territorial Submerged Lands Act conveyed all submerged lands to the Virgin Islands in an express trust, Virgin Islands officials had no authority to agree to convey any submerged lands out of trust to WICO; and second, that because the submerged lands in question here were always held in trust for the public under the common law, the lands could not be conveyed out of trust to WICO.

The first of these arguments need not long detain us. The Submerged Lands Act, passed in 1974, does indeed convey the submerged lands in trust, but does so "subject to existing rights." Existing rights include the right of WICO to reclaim and take title to at least 30 acres of specified submerged lands, as negotiated and agreed upon

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[17] Because we view the Second Addendum as definitively establishing contractual rights in WICO, we consider irrelevant the arguments made by the intervenors based on the rule against perpetuities and or alleged improper dismissal of the 1968 lawsuit. The interevnors assert that the 1913 grant of rights to WICO was in violation of the rule against perpetuities and, accordingly, invalid. We doubt that the act of a sovereign like Denmark's concession to WICO can violate the rule against perpetuities but we need not resolve that issue. WICO's rights under that concession were bargained away in thhe ensuing settlement negotiations and the rights it current possesses arise out of thhe contract entered into in 1982 by WICO and the Virgin Islands Government. Similarly, the 1968 lawsuit by the Department of the Interior had been pending sine die for almost a decade when the Second Addendum was signed; we agree with the district court that the 1968 suit was properly dismissed and had no further bearing on the relationship between WICO and the Virgin Islands Government.

in 1973 by both the United States and Virgin Islands Governments in the Memorandum of Understanding. Given this explicit exception, the Submerged Lands Act cannot be held to create a trust that would prevent conveyance to WICO, pursuant to an amendment of the Memorandum, of a maximum of about 15 acres of the specified submerged lands.

The second basis for the intervenors' public trust argument, the common law public trust doctrine, deserves more attention. In evaluating this argument we look to the "rules of common law . . . as generally understood and applied in the United States." [18] We begin with the leading case of *Illinois Central Ry. Co. v. Illinois*, 146 U.S. 387 (1892). There, the state legislature had transferred ownership of the submerged area of the entire waterfront of Chicago, over 1000 acres, to the railroad; four years later, a new legislature sought to revoke the transfer, and was challenged by the railroad. The revocation was upheld by the Court, which described title to the land under the harbor as:

> different in character from that which the state holds in lands intended for sale. It is different from the title which the United States holds in public lands which are open to preemption and sale. It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing

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[18] Under 1 V.I.C. § 4, the "rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply in the absence of local laws to the contrary." The common law public trust doctrine is not expressed in a restatement. Moreover, when the Virgin Islands legislature approved the Second Addendum in 1982, there were no relevant local laws. While the CZMA had been enacted in 1978, the legislation ratifying the Second Addendum amended that statute to grant grandfather status to rights, like WICO's, that had been recognized by legislative action.

> therein freed from the obstruction or interference of private parties.

146 U.S. at 452.[19]

Submerged lands are thus impressed with a trust for the benefit of the public, and the sovereign's use and disposition of those lands must be consistent with that trust. This does not mean, however, that a sovereign may under no circumstances convey submerged lands to a private party. To the contrary, the Supreme Court in the *Illinois Central* case expressly noted that alienation in furtherance of trust purposes was permissible:

> The interest of the people in the navigation of the waters and in commerce over them may be improved in many instances by the erection of wharves, docks and piers therein, for which purpose the State may grant parcels of the submerged lands; and, so long as their disposition is made for such purpose, no valid objections can be made to the grants. It is grants of parcels of lands under navigable waters, that may afford foundation for wharves, piers, docks and other structures in aid of commerce, and grants of parcels which, being occupied, do not substantially impair the public interest in the land and waters remaining, that are chiefly considered and sustained in the adjudged cases as a valid exercise of legislative power consistently with the trust to the public upon which such lands are held by the State. But that is a very different doctrine from the one which would sanction the abdication of the general control of the State over lands under the navigable waters of an entire harbor or bay, or of a sea or lake. Such abdication is not

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[19] There are a number of still older Supreme Court cases establishing that the United States, on acquiring territory, holds title to tidal lands in trust to be transferred to future states or territorial governments. *See, e.g., Weber v. Harbor Commissioners*, 85 U.S. (18 Wall.) 57, 65 (1873); *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212, 229 (1845).

> consistent with the exercise of that trust which requires the government of the State to preserve such waters for the use of the public. The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property. The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining. It is only by observing the distinction between a grant of such parcels for the improvement of the public interest, or which when occupied do not substantially impair the public interest in the lands and waters remaining, and a grant of the whole property in which the public is interested, that the language of the adjudged cases can be reconciled.

146 U.S. at 452-53.

These same principles were reconfirmed by the Supreme Court two years later in the context of congressional action regarding land as to which the sovereign prerogative belongs to the federal government:

> We cannot doubt, therefore, that Congress has the power to make grants of land below high water mark of navigable waters in any Territory of the United States, whenever it becomes necessary to do so in order to perform international obligations, or to effect the improvement of such lands for the promotion and convenience of commerce with foreign nations and among the several States, or to carry out other public purposes appropriate to the objects for which the United States hold the Territory.

Shively v. Bowlby, 152 U.S. 1, 47-48 (1894).[20]

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[20] When the federal government of the United States came into being, it held sovereign power, and had concomitant fiduciary duties,

While the common law public trust doctrine varies from state to state and has been altered by statute and in a number of state constitutions, *see Phillips Petroleum Co. v. Mississippi*, 56 U.S.L.W. 4143, 4145 (Feb. 23, 1988), the doctrine has developed in a manner consistent with the analysis of *Illinois Central* and *Shively*. The courts carefully scrutinize any conveyance of submerged lands to determine if it is in complete congruence with the fidicuary obligations owed to the public by the sovereign. If the conveyance represents a deliberate and reasonable decision of the sovereign that the transaction of which the conveyance is a part affirmatively promotes the public interest in the submerged lands, the courts have deferred to the sovereign's decision. *See* Sax, *The Public Trust Doctrine in Natural Resource Law*, 68 Mich. L. Rev. 471 (1970); W. Rodgers, Environmental Law § 2.16 (1977); 1 V. Yannecone & B. Cohen, Environmental Rights and Remedies § 2.3 (1972). Accordingly, the issue before us is whether, in 1982, the Virgin Islands legislature's ratification of the Second Addendum was consistent with its fiduciary obligation to manage and control the lands beneath the harbor at Charlotte Amalie for the ben-

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with respect to all public trust lands not already subject to the sovereignity of the original states. When the United States subsequently acquired more territory, the federal government held all submerged and tidal lands within the newly acquired acreage in trust, for future transfer to states; as new states came into being, they replaced the federal government as sovereign and fiduciary. Under the Constitution, of course, Congress has a paramount interest in the areas of navigation and commerce, and paramount powers to take action necessary to fulfill international obligations. With regard to submerged and tidal lands, the status of the Virgin Islands, as previously noted, is somewhat different from that of the states; the Virgin Islands did not acquire sovereign power over trust land within its borders by means of statehood, but rather through transfer by Congress pursuant to the 1974 Territorial Submerged Lands Act. With the Submerged Lands Act, Congress turned over to the Virgin Islands Government both sovereign power and fiduciary obligations with respect to public trust lands within the Virgin Islands.

efit of the public. We hold that its ratification was in furtherance, not in derogation, of that obligation, and therefore sustain the validity of its action.

In 1982, the Virgin Islands legislature was confronted with a bona fide dispute over the issue of whether WICO had continuing rights in up to 42 acres of submerged land in the harbor. Wico's claim rested on a conveyance from the Danish government, alleged to be perpetuity, which predated the transfer of the Islands to the United States and which the Convention of Cession called for the United States to consummate through a fee simple conveyance; if that claim were adjudicated in its favor, WICO would be entitled upon reclamation to fee simple title to all 42 acres free of any public trust. This would follow not only from the well-established principle that submerged lands may be conveyed free of trust to satisfy international obligations *Shively, supra*; *Montana v. United States*, 450 U.S. 544, 551-52 (1981), *reh'g denied* 452 U.S. 911, but also the holding of *Knight v. United States Land Ass'n*, 142 U.S. 161, 183-84 (1891), that the public trust doctrine "does not apply to lands that had been previously granted to other parties by the former government, or subjected to trusts which would require their disposition in some other way."

Though confronted with the possibility, if not the probability, that the sovereign and its public beneficiaries would wind up with no interest in the disputed 42 acres, the legislature had available an attractive alternative in the Second Addendum, negotiated with WICO by the Virgin Islands executive. By ratifying that agreement, the legislature, first and foremost, could remove the cloud from the title to all but 15 of the disputed acres, making sure that those lands would henceforth be impressed with a public trust. This would allow planning for the development of the harbor in the public interest to go forward on a timely basis, unhindered by uncertainties about ownership rights and future litigation.

While the greatest, this was not the only incentive the legislature had to exercise its fiduciary discretion in favor of the proposed settlement. Under the Second Addendum, WICO was to make a substantial contribution to the development of the harbor.[21] As the district court noted, the Memorandum explained that the settlement would "satisfy a compelling public need" in the following respects:

> (1) An additional 2½ acres will be added by WICO to the public recreation area near Pearson Garden, thus doubling its size;
>
> (2) Filled land for the waterfront highway to permit widening from two to four lanes will be provided by WICO.
>
> (3) Dredging the harbor in Long Bay will be provided by WICO, thereby benefiting navigation and promoting tourism;
>
> (4) The reclamation will enlarge the area of level land for development near the downtown area of Charlotte Amalie now limited because of the hilly terrain;
>
> (5) The development contemplated on the reclaimed lands for marinas, cruise ship berths, offices and other like facilities will provide additional employment for residents of St. Thomas and enhance tourism facilities . . . .

643 F. Supp. at 878.

Finally, the record shows no reason for the legislature to have thought that the proposed settlement would in

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[21] Harbor development, as we have noted, has consistently been recognized as a legitimate public purpose for which submerged land may be conveyed out of trust. *E.g.*, *Appleby v. New York*, 271 U.S. 364, 399 (1929) (overturning on contract clause grounds New York's attempted invalidation of a grant of title to roughly 18 acres of submerged ground for purpose of harbor development); *City of Milwaukee v. State*, 193 Wisc. 423, 214 N.W. 820 (1927) (Milwaukee allowed to convey out of trust, for purpose of harbor development, land ceded to Milwaukee by state).

any way impair its ability to manage and control the harbor in the future for the benefit of the public. The basin in which the disputed acreage is located is approximately 400 acres in area, and this basin is only a part of the total harbor. The lands to be conveyed to WICO under the Second Addendum thus constitute a small fraction of the harbor. Moreover, the provisions of that agreement assured the legislature that WICO's development of its acreage would be limited in scope and would not substantially interfere with navigation or commerce. The absence of any such substantial interference was also ensured by the federal permit requirement, and is evidenced by the actions of the permitting authorities in allowing WICO to proceed with the development as it has done.

Given these circumstances, we cannot fault the legislature's decision to approve the Second Addendum. Approval was clearly consistent with the fiduciary obligations of the legislature. For this reason, we conclude that the public trust doctrine did not bar the formation of a valid contract involving the conveyance of 15 acres of submerged land to WICO.

V.

The intervenors' final argument in support of the Repeal Act is that the Act is a valid use of the police power, and that the police power cannot be limited by contract. We find this argument unpersuasive. Although the prohibition of the contract clause is circumscribed, often sharply, by the inherent police power of the state, there are limits to this circumscription. Police power, the Supreme Court has said,

> is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contract between individuals. . . . If the Contract Clause is to retain any meaning at all, however, it must be understood to impose *some*

> limits upon the power of a State to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power.

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 241-42 (1978), *reh'g denied* 439 U.S. 886 (1978); *see also Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410 (1983).[22]

In *Energy Reserves*, the Supreme Court set forth a three-step analysis to be used in cases where contract clause claims must be balanced against legislation passed in exercise of police power:

> The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." . . . If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation . . . such as the remedying of a broad and general social or economic problem. . . . Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of "the rights and responsibilities of contracting parties [is base] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." . . . Unless the State itself is a contracting party . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

459 U.S. at 411-412 (citations omitted). This court recently applied the *Energy Reserves* analysis in *Nieves v. Hess Oil Virgin Islands Corp.*, 819 F.2d 1237, 1243 (3d Cir. 1987) (amendment of Virgin Islands Workmen's Compensation Act to retroactively eliminate application of the "borrowed employee" doctrine as a bar to pending

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[22] It is not disputed that the Virgin Islands Government has police power similar to that of a state.

tort suits constituted unjustified impairment of contract), and we will now apply it here.

We have already found that the Second Addendum constitutes a contract between WICO and the Virgin Islands Government; we begin here with the question whether the contract contained in the Second Addendum is substantially impaired by the Repeal Act. There can be no doubt that it is. Under the Second Addendum, WICO "shall have title to and ownership of the areas filled"; WICO may use its reclaimed land free of rental charges; and WICO is subject, for a limited time, to development restrictions contained in the contract rather than those of the CZMA. If the Repeal Act is enforced, however, WICO will be reduced to the status of a mere applicant for a permit under the CZMA; WICO will never take title to the areas it fills, if it is allowed to fill any; WICO will always have to pay rental charges for use of any land it is allowed to reclaim; and WICO will be subject to all the restrictions of the CZMA, including the requirement that any permit it obtains be ratified by the legislature and approved by the governor. Clearly, WICO's contract rights are gravely impaired, to the point of virtual annihilation, by the Repeal Act. That the coastal zone area is generally subject to considerable regulation does not, in our view, lessen the severity of the impairment of WICO's contract rights.

Turning to the second step of the analysis, we find the Repeal Act's purpose too narrow in scope to justify the substantial impairment that it effects. Although it may be said that the Repeal Act is addressed to the public interest in the sense that it provides no benefit to special private interests, abrogating the contract with WICO and retaining title, albeit a heavily clouded one, to the 15 acres of submerged land at issue is not a "significant" public purpose, and is by no stretch of the imagination a remedy for a "broad or general social or economic problem." The Repeal Act is by its own terms directed at a

single company and a single 15-acre area. In this way, it is similar to the legislation we struck down in *Nieves*, which we found to be directed at a single company, and similar to the legislation struck down by the Court in *Allied Structural Steel*. The following dconsiderations discussed in *Allied Structural Steel* are apposite here:

> This Minnesota law simply does not possess the attributes of those state laws that have in the past survived challenge under the Contract Clause of the Constitution. The law was not even purportedly enacted to deal with a broad, generalized economic or social problem. . . . It did not operate in an area already subject to state regulation at the time the company's contractual obligations were originally undertaken . . . . It did not effect simply a temporary alteration of the contractual relationships of those within its coverage, but worked a severe, permanent, and immediate change in those relationships—irrevocably and retroactively. . . . And its narrow aim was leveled, not at every Minnesota employer, not even at every Minnesota employer who left the State, but only at those who had in the past been sufficiently enlightened as voluntarily to agree to establish pension plans for their employees.

438 U.S. at 250. In this instance, the legislation is even narrower in scope than the Minnesota legislation found objectionable by the Court. Accordingly, we conclude that the Repeal Act cannot be justified by a significant public purpose.

The final step of the analysis calls for us to determine whether the Repeal Act's adjustment of WICO's rights is a reasonable and appropriate accommodation in light of any legitimate public purpose supporting the Act. Because the Virgin Islands Government is a party to the contract, we need not defer to the judgment of the Sixteenth Legislature, but "may inquire whether a less drastic alteration of contract rights could achieve the

same purpose and whether the law is reasonable in light of changed circumstances." *Nieves*, 819 F.2d at 1243. Since we have found no legitimate public purpose supporting the Repeal Act, we need not reach this final step. With respect to the reasonableness of the Repeal Act, however, we note that the Sixteenth Legislature did not even purport to base its action upon any facts or circumstances not existing and well known to its predecessor at the time the Second Addendum was approved. The only circumstance that has arguably changed since 1982 is the force of public opinion.

We hold only that the Repeal Act is invalid. We do not, of course, hold that the police power of the Virgin Islands with respect to WICO's 15 acres was exhausted when the Second Addendum was approved. WICO is obviously not immune from generally applicable police power measures not inconsistent with the Second Addendum. Moreover, if conditions materially change so as to create a substantial problem that could not be foreseen in 1982, it may be that generally applicable land use regulations could validly alter the manner in which WICO may utilize its property. We are not at present confronted with an issue, however, and express no opinion with respect to it.

VI.

The remaining issue is the intervenors' claim against the executive branch of the Virgin Islands Government.[23] The citizen intervenors now contend that the executive branch, by declining to defend this suit or hire outside counsel to defend it, breached its fiduciary duty and violated the citizens' constitutional rights.

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[23] The intervenors filed a cross-claim under Fed. R. Civ. P. 13(g) against the executive branch; as Rule 13(g) applies only to co-parties, and neither the "excutive branch" nor any members thereof are parties to this action, this filing cannot be correct. However, the procedural irregularity may be ignored in light of our conclusion on this issue.

We agree with the district court that the Virgin Islands executive owed the intervenors no duty to defend this suit or to hire outside counsel to do so. The statute cited by the intervenors as imposing on the executive branch a duty to represent the Government, 3 V.I.C. § 114, provides only that the Virgin Islands Attorney General is to represent the executive branch of the Virgin Islands Government; this does not say or mean that the executive branch must defend whenever the Virgin Islands Government is sued. There is simply no authority for the intervenors' contention that the executive branch of a territory must defend a challenge to the constitutionality of an act of its territorial legislature when the executive branch is of the view that the legislative action is constitutionally infirm.[24] We decline to establish such a precedent.

VII.

For the foregoing reasons, we will affirm the grant of summary judgment and a permanent injunction to WICO, as well as the dismissal of the citizen intervenors' cross-claim against the executive branch of the Virgin Islands Government.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

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[24] This is not a rare situation. *See, e.g., Karcher v. May*, 108 S. Ct. 388, 391 (1987) (presiding officers of New Jersey legislature sought and obtained permission to intervene when neither state attorney general nor other named defendants would defend minute-of-silence statute passed over governor's veto). Accordingly, we find the absence of any authority for the intervenors' position significant.

DISTRICT COURT, VIRGIN ISLANDS
D. ST. THOMAS AND ST. JOHN

Civ. No. 1986/293

THE WEST INDIAN COMPANY, LIMITED,
Plaintiff,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,
Defendant,

v.

THE LEGISLATURE OF THE VIRGIN ISLANDS, HELEN W. GJESSING, Individually and as President of Save Long Bay Coalition, Inc., LEONARD REED, Individually and as President of Virgin Islands Conservation Society, Inc., KATE STULL, Individually and as President of League of Women Voters of the V.I., Inc., LUCIEN MOOLENAAR, Individually and as President of Virgin Islands 2000, Inc., RUTH MOOLENAAR, Individually and as Director of the St. Thomas Historical Trust, Inc.,
Intervenors.

April 13, 1987

Maria T. Hodge, St. Thomas, V.I., Sanford C. Miller, New York City, for The West Indian Co., Ltd.

Rhys S. Hodge, St. Thomas, V.I., for Legislature of the Virgin Islands.

David A. Bornn, Edith L. Bornn, Judith L. Bourne, Benjamin A. Currence, Pallme & Mitchell, Veronica J.

Handy, Stedmann Hodge, Brenda Hollar, David Iverson, Aurelia Rashid, Birch, deJong & Farrelly, Denise Reovan, Law Offices of Desmond Maynard, St. Thomas, V.I., for intervenors Gjessing, et al.; Gilbert L. Finnel, Jr., Houston, Tex., of counsel.

MEMORANDUM OPINION

DAVID V. O'BRIEN, District Judge.

The plaintiff and Helen W. Gjessing, *et al.*, as citizen intervenors, have each filed a motion for summary judgment in this matter. The Legislature of the Virgin Islands, as intervenor, opposes the plaintiff's motion. We grant summary judgment herein in favor of the plaintiff, and deny the relief sought by the citizen intervenors. By so doing, we convert a previously entered preliminary injunction into a permanent injunction, barring interference with the plaintiff's rights under a Memorandum of Understanding entered into in 1973, and certain Addenda thereto.

I. FACTS

This case has previously been the subject of a lengthy published opinion. *West Indian Co. v. Government of the Virgin Islands*, 643 F.Supp. 869 (D.V.I.1986), *aff'd*, 812 F.2d 134 (3d Cir.1987).

The material facts were spelled out in detail in that opinion. Since its issuance, additional documents have been filed in conjunction with the motion for summary judgment, but they do not alter the essential fact pattern or the legal interpretation of those facts.

For the purpose of deciding the motions before us, we adopt in full the findings of fact as recited in *West Indian Co., supra*, at 870-873. Since the record before us is almost exclusively documentary, the material facts are not in dispute. The legal interpretation of those facts, however, is sharply contested.

The prior opinion was issued upon a motion for a preliminary injunction, whereby the plaintiff sought to enjoin the Government of the Virgin Islands and other parties from interference with its rights to dredge and fill land in St. Thomas harbour under a certain Memorandum of Understanding dated October 3, 1973. The Memorandum had previously been approved as to content by the Legislature of the Virgin Islands by Act No. 3326 in 1972. The plaintiff, the United States of America, and the Government of the Virgin Islands were parties to that agreement, as were certain other persons. Subsequent to its execution, two Addenda were also entered into, one of which was substantive in nature. It was also approved by the Legislature of the Virgin Islands by Act No. 4700 in 1982.

The Memorandum of Understanding was intended to resolve a dispute among the parties as to the rights of the plaintiff preserved in the 1917 treaty between Denmark and the United States by which the Virgin Islands became a possession of the United States. In effect, it settled a law suit over the nature and extent of those rights, brought by the United States under Civil No. 1968/337 (St. Thomas & St. John Division).

The subsequent Addenda further clarified the plaintiff's rights and left the plaintiff free to commence the dredging and filling of submerged lands in St. Thomas harbour. This it proceeded to do in 1986. The resulting public furor caused the duly elected members of the Legislature to enact, over the governor's veto, Act. No. 5188, repealing Acts Nos. 3326 and 4700, which, in effect, repudiated the Memorandum of Understanding and its Addenda. This, of course, wiped out all of plaintiff's agreed-upon dredging rights, and led to the law suit herein.

As noted earlier, a full exposition of the facts is contained in *West Indian Co., supra* at 870-873.

The grant of a preliminary injunction to the plaintiff was appealed to the Third Circuit on a variety of grounds, only some of which had been raised in this Court earlier.

II. DISCUSSION

A. *The Motions for Summary Judgment*

It is well settled that cross-motions for summary judgment do not warrant the court in granting summary judgment unless once [sic] of the moving parties is entitled to judgment as a matter of law upon facts that are not genuinely disputed. *Manetas v. International Petroleum Carriers, Inc.*, 541 F.2d 408, 413 (3d Cir.1976); *Rains v. Cascade Industries, Inc.*, 402 F.2d 241, 245 (3d Cir. 1968); *F.A.R. Liquidating Corp. v. Brownell*, 209 F.2d 375, 380 (3d Cir.1954).

The party who moves for summary judgment has the burden of demonstrating that there is no genuine issue of fact. *Kress, Dunlap & Lane, Ltd. v. Downing*, 286 F.2d 212, 215 (3d Cir. 1960). As we have previously stated, the facts in this case are largely drawn from submitted documents. They are not genuinely disputed.

B. *Assertions of the Parties*

In their response to the plaintiff's motion for summary judgment, and in their own cross-motion for summary judgment, the citizen intervenors raise essentially the same legal arguments which were raised earlier to no avail on the same set of material facts. Likewise, the Legislature of the Virgin Islands makes the same argument it made before us originally, and thereafter on appeal to the Third Circuit.

The primary arguments, made in this Court earlier, on appeal, and again with reference to summary judgment, are:

(1) The public trust doctrine prevented the government from being a party to the 1973 Memorandum of Understanding and Addenda thereto. Therefore, the government acted illegally and the repeal of those actions by a subsequent legislature was valid.

(2) The repeal of the previous agreements entered into by the government was a valid exercise of the police power, even in the face of the Contract Clause contained in the U.S. Constitution Art. I, Sction 10 and the Revised Organic Act of 1954, Section 3.

The citizen intervenors and the Legislature repeat these arguments again in their filings concerning the motions for summary judgment. These same arguments were rejected by us in *West Indian Co. v. Government of the Virgin Islands, supra,* 643 F. Supp. at 873-883. They were also rejected without discussion by the Third Circuit. 812 F.2d 134 (1987).

No additional material facts have been presented since the time of our earlier opinion, and no new or more persuasive legal arguments have been offered by any of the intervenors which would cause us to alter our previous legal rulings with reference to the public trust doctrine and the police power assertions. We stand on our previous rulings concerning these contentions, and once again, reject them.

The intervenors do raise before us a new claim that the Rule Against Perpetuities was violated by the Memorandum of Understanding and its Addenda. This argument was briefed and presented to the Third Circuit in the appeal of our entry of a preliminary injunction. The Third Circuit, at page 135, noted that it had given "full consideration of the matters set forth in the briefs and at oral argument". Thus, we assume that the contentions concerning the Rule Against Perpetuities were considered and rejected by the Third Circuit. Since this is our first review of this argument, we discuss it briefly.

The common law Rule Against Perpetuities is enunciated in the Restatement of Properties (1944), Sections 370-403, and the Restatement (Second) of Properties (1981) Section 1.1-2.2. The citizen intervenors contend that because the rule is contained in the restatements of the law, it must be applied in the instant case under Virgin Islands law. We disagree. The Rule Against Perpetuities is inapplicable to the matter herein. Title 1, Section 4 of the Virgin Islands Code states:

> The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, *in the absence of local laws to the contrary.* (emphasis added)

In this instance the Memorandum of Understanding, dated October 9, 1973, was executed by the governor of the Virgin Islands only after its terms had been previously approved by the Ninth Legislature of the Virgin Islands on October 30, 1972 (Act No. 3326). Likewise, the Second Addenda to the Memorandum of Understanding, dated September 22, 1981, was ratified and approved by the Fourteenth Legislature on April 7, 1982 (Act No. 4700). By its terms, the Second Addenda has "the full force and effect of law."

It is clear, then, that even if applicable, the Rule Against Perpetuities was modified by adoption of local laws to the contrary.

The Restatement of Property (1944) in effect until 1981, recognizes that the Rule Against Perpetuities is the common law of each jurisdiction in the United States only "[i]n the absence of a statutory abrogation or modification." Restatement of Property, Part I, Intr. Note, p. 2133. The same language is carried over in the

Restatement (Second) of Property adopted in 1981, Vol. I, p. 11. The effect of a legislative enactment is to supercede the common law rules. *Dague v. Piper Aircraft Corp.*, 275 Ind. 520, 418 N.E.2d 207, 213 (S.C. Ind. 1981); *Drennan v. Security Pac. Nat. Bank*, 28 Cal.3d 764, 170 Cal. Rptr. 904, 621 P.2d 1318, 1327 (S.C. Cal.), *cert. denied* 454 U.S. 833, 102 S.Ct. 132, 70 L.Ed.2d 112 (1982).

This remaining primary argument of the citizen intervenors, is, therefore, without merit.

The citizen intervenors, beyond the three primary arguments, raise a variety of other issues on pages 66-68 of their brief in response to plaintiff's summary judgment motion. Many of them are subsumed in our discussion of the three primary contentions. The remainder of them are without merit, being listed as disputes of material facts, when in reality they are legal arguments and/or interpretations of facts not actually in dispute

III. CONCLUSION

We have discussed the public trust and the police power vs. contract clause arguments in our earlier opinion. We discussed the final primary argument concerning the applicability of the Rule Against Perpetuities herein. We conclude that the plaintiff is entitled to a permanent injunction, enjoining the Government of the Virgin Islands and all intervenors from interference with the rights of the plaintiff arising under the Memorandum of Understanding and its Addenda. Act No. 5188 is an unconstitutional interference with those rights, a violation of the Contract Clause as contained in both the Constitution and the Revised Organic Act.

Since the counterclaim by the citizen intervenors and their cross claim against other parties are rendered moot by the grant of a permanent injunction, they will be dismissed.

ORDER

THIS MATTER came before the Court on a motion by the plaintiff for summary judgment and a cross-motion by Helen W. Gjessing, *et al.* for summary judgment. The plaintiff also previously filed a motion to dismiss the counterclaim and the Government of the Virgin Islands moved to dismiss the citizen intervenors' cross claim. The Court having filed its memorandum opinion of even date herewith, now therefore it is

ORDERED:

THAT the motion of the plaintiff for summary judgment is GRANTED, and a permanent injunction will issue thereon; and

THAT the motion of Helen W. Gjessing, *et al.* for summary judgment is DENIED; and

THAT the motion of the plaintiff to dismiss the counterclaim is GRANTED, and it is hereby DISMISSED, WITH PREJUDICE; and

THAT the motion of the Government of the Virgin Islands to dismiss the cross claim of Helen W. Gjessing, *et al.* is GRANTED, and it is hereby DISMISSED WITH PREJUDICE.

PERMANENT INJUNCTION

THIS MATTER is before the Court on motion of the plaintiff for summary judgment, and a cross-motion of Helen W. Gjessing *et al.* for summary judgment. In an opinion issued of even date herewith, we find that the adoption by the Legislature of the Virgin Islands of Act No. 5188, which repealed Acts Nos. 3326 and 4700, is an unconstituional interference with the rights of the plaintiff under a certain Memorandum of Understanding dated October 3, 1973, and Addenda thereof, dated October 28, 1975 and September 22, 1981 respectively. The

Government of the Virgin Islands was a party to the Memorandum of Understanding and its Addenda, and the substantive contents were approved by the Legislature by Acts Nos. 3326 and 4700.

The premises considered, now therefore it is

ORDERED and ADJUDGED.

THAT the Government of the Virgin Islands, the Legislature of the Virgin Islands and the citizen intervenors above captioned, be and the same are PERMANENTLY ENJOINED from any and all interference with the rights of The West Indian Company, Limited, arising under the Memorandum of Understanding dated October 3, 1973, as amended on October 28, 1975 by the First Addendum, and on September 22, 1981 by the Second Addendum thereto.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT

Nos. 86-3577, 86-3578

WEST INDIAN COMPANY, LTD.,
Plaintiff/Appellee,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,
Defendant,

and

LEGISLATURE OF THE VIRGIN ISLANDS,
Intervenor/Appellant,

and

HELEN G. GJESSING, LEONARD REED, KATE STULL,
LUCIEN MOOLENAAR, RUTH MOOLENAAR,
Intervenors/Appellants.

LEGISLATURE OF THE VIRGIN ISLANDS,
Appellant in No. 86-3577,

HELEN G. GJESSING, *et al.*,
Appellants in No. 86-3578.

Argued Feb. 17, 1987

Decided Feb. 26, 1987

Maria Tankenson Hodge, St. Thomas, V.I., Sanford C. Miller (argued), Christopher G. Kelly, Haight, Gardner, Poor & Havens, New York City, for appellee West Indian Co., Ltd.

David A. Bornn (argued), Edith L. Bornn, Judith L. Bourne, Benjamin A. Currence, Veronica J. Handy, Brenda J. Hollar, David W. Iverson, Aurelia O. Rashid, Denise Reovan, St. Thomas, V.I., Gilbert L. Finnel, Jr., Houston, Tex., of counsel, for intervenors-appellants Helen Gjessing, et al.

Rhys S. Hodge (argued), St. Thomas, V.I., for Legislature of the Virgin Islands.

Before GIBBONS, Chief Judge, SLOVITER, Circuit Judge, and SCIRICA, District Judge.*

OPINION OF THE COURT

PER CURIAM.

The district court entered an order on September 30, 1986 enjoining the Government of the Virgin Islands, the Virgin Islands legislature and the citizen intervenors in this action from interfering with the rights of the Plaintiff, The West Indian Company, Ltd., under the 1973 Memorandum Agreement [entered into between WICO, the United States Government and the Government of the Virgin Islands], and Addenda thereto, pending a final hearing in this case on the merits. App. at 460-61, 643 F.Supp. 869. The Legislature of the Virgin Islands, as intervenor/appellant, and the citizens/intervenors have appealed from that order. We have jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

A preliminary injunction may be granted if the moving party demonstrates:

> (1) a reasonable probability of eventual success in the litigation and (2) that the movant will be irreparably injured pendente lite if relief is not granted. Moreover, while the burden rests upon the moving party to make these two requisite showings, the dis-

* Hon. Anthony J. Scirica, United States District Court for the Eastern District of Pennsylvania, sitting by designation.

> trict court "should take into account, when they are relevant, (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest."

Professional Plan Examiners of New Jersey, Inc. v. LeFante, 750 F.2d 282, 288 (3d Cir.1984) (quoting *In re Arthur Treacher's Franchisee Litigation*, 689 F.2d 1137, 1143 (3d Cir.1982)).

The grant or denial of a preliminary injunction is committed to the sound discretion of the district court, which must balance all of the relevant factors in making a decision. *Kershner v. Mazurkiewicz*, 670 F.2d 440, 443 (3d Cir.1982) (in banc). Consequently, the scope of appellate review of a trial court's ruling on a motion for preliminary injunction is narrow, and the trial court's judgment is presumptively correct. *Id.*

After full consideration of the matters set forth in the briefs and at the oral argument, we cannot conclude that the district court committed an error in applying the law or that the grant of the preliminary injunction represented an abuse of discretion. We are confident that in light of the respective interests at issue, the district court will proceed as promptly as possible to a final disposition in this matter.

For the foregoing reasons, we will affirm the order of the district court.

DISTRICT COURT, VIRGIN ISLANDS
D. ST. THOMAS AND ST. JOHN

Civ. No. 1986/293

THE WEST INDIAN COMPANY, LIMITED,
Plaintiff,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,
Defendant,

and

THE LEGISLATURE OF THE VIRGIN ISLANDS, HELEN W. GJESSING, Individually and as President of Save Long Bay Coalition, Inc., LEONARD REED, Individually and as President of Virgin Islands Conservation Society, Inc., KATE STULL, Individually and as President of League of Women Voters of the V.I., Inc., LUCIEN MOOLENAAR, Individually and as President of Virgin Islands 2000, Inc., and RUTH MOOLENAAR, Individually and as Director of the St. Thomas Historical Trust, Inc.,

Intervenors.

Sept. 3, 1986

Maria T. Hodge (argued), St. Thomas, V.I., Sanford C. Miller, New York City, for The West Indian Co., Ltd.

Rhys S. Hodge (argued), St. Thomas, V.I., for Legislature of the Virgin Islands.

Alexander A. Farrelly, Birch, deJongh & Farrelly, David A. Bornn, Edith L. Bornn, Judith L. Bourne, Ben-

jamin A. Currence, Pallme & Mitchell, Veronica J. Handy, Stedmann Hodge, Brenda Hollar (argued), Aurelia Rashid (argued), Birch, deJongh & Farrelly, Denise Reovan, Law Offices of Desmond Maynard, St. Thomas, V.I., for intervenors Gjessing, et al.

Hiram Abiff Rasool, Jackson Ins. Agency, St. Thomas, V.I., amicus curiae.

MEMORANDUM OPINION AND ORDER

DAVID V. O'BRIEN, District Judge.

For 73 years The West Indian Company, Limited has had rights of reclamation in the principal harbor of St. Thomas. These rights were preserved in the 1917 treaty between Denmark and the United States whereby the Virgin Islands became a United States possession. They have been conceded and accepted by every territorial elected governor, their attorneys general, and two separately elected territorial legislatures. The issue before us is whether these rights, now contained in a contract to which the territorial government is a party, may be extinguished by the presently sitting legislature pursuant to its reserved power.

We find that they may not, and we will enter a preliminary injunction to enjoin interference with the rights contained in the original contract and its addenda.

I. FACTS

This controversy has its geneisis in a 1913 grant by the Government of Denmark to the plaintiff herein, ("WICO"), of substantial rights to reclaim and fill designated portions of Charlotte Amalie harbor, St. Thomas. These rights were specifically preserved in the 1917 treaty between the United States and Denmark which ceded the Virgin Islands to the United States. The Treaty provides at Section 3:

4) The United States will maintain the following grants, concessions and licenses, given by the Danish Government, in accordance with the terms on which they are given:

a. The concession granted to 'Det Westindiske Kompagni' (The West Indian Company) Ltd. by the communications from the Ministry of Finance of January 18th 1913 and of April 16th 1913 relative to a license to embark, drain, deepen and utilize certain areas in St. Thomas Harbor, and preferential rights as to commercial, industrial or shipping establishments in the said Harbor.

The question whether the grant to WICO was in perpetuity or whether it had a termination point, was cleared up in advance of the treaty by communications from the Government of Denmark to the United States in response to the latter's inquiry. Denmark made clear that the grant to WICO was in perpetuity, without limitation as to the time within which the license was to be exercised.

Notwithstanding the exchange of communications which indicated that the grant to WICO was without a time limitation, the United States initiated a civil action in District Court, Division of St. Thomas, in 1968. (Civ. No. 1968/337). In it, the Justice Department sought to have the District Court declare WICO's rights terminated. While the case was pending, the Danish Government sent a diplomatic note dated June 17, 1970, to the Government of the United States, requesting it to respect the WICO concession.

Thereafter, the Hon. Warren H. Young, U.S. District Judge assigned to the case, noted the obvious difficulty the United States would have in terminating WICO's rights in the face of its knowledge, prior to the Treaty, that they were without time limitations. He also viewed the involvement of the Government of the Virgin Islands, not then a party to the case, as a prime necessity in order

to protect its own vital interests. The result of Judge Young's concerns was a letter to Governor Melvin H. Evans, the territory's first elected governor, urging him to become personally involved in a settlement of the case.

Settlement negotiations involving the United States, the territorial government, WICO and other parties to the lawsuit resulted in a settlement proposal by WICO which found favor with the territorial government. Public hearings were held on the matter and the settlement was referred to the Legislature of the Virgin Islands for ratification and approval. On October 11, 1972, the Legislature approved Act No. 3326, and the Governor formally affixed his approval to this legislation on October 30, 1972.

The formal Memorandum of Understanding, (hereafter "Memorandum"), dated nearly a year later, October 3, 1973, was signed by representatives of the United States, the Virgin Islands, and WICO, among others. One of the most significant aspects of the Memorandum is that the acreage of the concession granted WICO was measurably reduced and the territorial government received rights to other lands it did not previously possess. These are only two of the major provisions of the 35 page Memorandum.

There is no question that the Memorandum was a full settlement of the litigation initiated by the United States in 1968, since both the Memorandum and Act No. 3326 ratifying and approving the settlement speak to that point. It is also important to note that the Attorney General of the Virgin Islands was required to approve the Memorandum (and subsequent Addenda) relative to the authority of the territorial officials to enter into such agreement, and to determine that the documents were legal, binding and valid.

The Memorandum contains an elaborate procedure for transfer of the submerged lands to WICO once both

parties, the Virgin Islands Government and WICO, fulfilled certain preconditions. To date many of these conditions remain unfulfilled awaiting completion of the dredging and filling. One nuance of these procedures which needs explanation is the transfer of the lands from the United States.

In the Memorandum, the Justice Department took the view that the settlement proposal encompassed important matters outside the scope of the lawsuit and therefore required any disposition of property to be made under the then existing Territorial Submerged Lands Act. 48 U.S.C. § 1701 *et seq.* (Supp.1986) (See pg. 7 the Memorandum). At that time the United States held title to all submerged lands surrounding the Virgin Islands, subject, of course, to WICO's rights preserved in the Treaty. The Memorandum, to recognize the United States' claim to these lands, included a two-step conveyance procedure, ("transfer procedure"), to occur at closing. First, the lands was to be conveyed from the Secretary of the Interior to the Virgin Islands Government and only then reconveyed to WICO. (See § 6(a) of Memorandum at pg. 14). This procedure became moot as of October 5, 1974, because control of these submerged lands was transferred from the United States to the Government of the Virgin Islands, subject to valid existing rights. 48 U.S.C. Section 1704 *et seq.* (Supp.1986).

A First Addendum to the Memorandum of Understanding was entered into on October 28, 1975, to reflect this transfer of control to the territorial government over submerged lands. A $45,000 annual payment, previously made to the U.S. Department of Interior by WICO, was from that time to go to the territorial government. The attorney general determined that the First Addendum need not be submitted to the Legislature. In effect this addendum recognized there was no longer a need for the two-step conveyance since the United States no longer held title to the land. At this point in time the only

thing preventing transfer of title pursuant to the Memorandum was completion of the various recognized preconditions mentioned above.

Thereafter, the Virgin Islands enacted in 1977 the Coastal Zone Management Act. 12 V.I. §§ 901-14 (1982). To reflect a compromise concerning the application of the Act to WICO's previously existing concession rights, the Government, WICO, and certain private parties entered into a Second Addendum to Memorandum of Agreement, dated September 22, 1981. That agreement further limited WICO's rights of reclamation which, by virtue of the various agreements, were reduced from 42 acres to 15 acres. A requirement of the Second Addendum was that it be ratified and approved by the Legislature, which took place on April 7, 1982, as Act No. 4700.

On April 12, 1984, in a yearly review of the status of cases, this Court entered a dismissal of the 1968 action by the United States against WICO for lack of prosecution.

In June, 1986, WICO commenced its dredging in the Long Bay area of St. Thomas, having obtained the necessary permits. This dredging is one of the preconditions required of WICO in the Memorandum. The ensuing publicity generated energetic citizen response, which in turn generated a bill in the Legislature to repeal WICO's rights contained in Acts Nos. 3326 and 4700. This bill (16-0607) was a repudiation not only of the prior legislative ratifications of Acts Nos. 3326 and 4700, but a disavowal of the territorial government's prior approval of the Memorandum of Understanding, the First Addendum and the Second Addendum. Bill No. 16-0607 was approved by the Legislature on July 9, 1986, but vetoed by Governor Juan Luis on July 21, 1986. On August 11, 1986, the Legislature overrode the veto by the Governor and it became law as Act No. 5188.

On August 14, 1986, WICO promptly moved in this Court for a temporary restraining order and a prelim-

inary injunction against enforcement of the provisions of Act No. 5188, and other relief. On August 19, 1986, a hearing was held pursuant to this motion. At that time we enjoined by temporary restraining order, any interference with WICO's right to dredge and scheduled a hearing on the preliminary injunction for August 26, 1986.

At the August 19, 1986, hearing on a temporary restraining order, the attorney general of the Virgin Islands informed the Court that the executive branch of the government would not appear in the case, since it considered the repeal of WICO's rights to be invalid, and any appearance on its part would be simply to affirm WICO's right to the relief sought.

We then permitted the Legislature of the Virgin Islands to appear as an intervenor, along with certain officers of interested citizen groups. We rejected a motion by the intervenors to compel the executive branch to appear in the case. We noted at the time that with the grant of intervention to both the Legislature and the citizen group representatives, the interests of those favoring repeal of WICO's rights would be well repreented, even without the appearance of the executive branch. This view was rewarded by the swift filing of briefs by intervenors, and by the excellence of the briefs and the oral presentations by intervenors' counsel.

To summarize, as of August, 1986, three successive elected governors, their respective attorneys general, and two separate Legislatures of the Virgin Islands have recognized WICO's right to dredge and reclaim certain defined submerged lands in the harbor of Charlotte Amalie. The various officials described above successfully negotiated limits with respect to both acreage and time as to WICO's rights, and gained important concessions in favor of the territory. The reason for this case is that the Sixteenth Legislature, now sitting, takes issue

with the validity of the actions undertaken by the territorial officials above described.

II. DISCUSSION

The elements a moving party must show for a preliminary injunction are: "a reasonable probability of eventual success in the litigation and that the movant will be irreparably injured *pendente lite* if relief is not granted." *Professional Plan Examiners of N.J. v. Lefante*, 750 F.2d 282, 288 (3d Cir.1984).

In addition to the above elements, a District Court should consider two other elements when relevant. These elements are the possibility of harm to other interested persons from the grant or denial of the injunction, and the public interest. *Professional Plan Examiners, supra* at 288. Examining these four elements, we find WICO has convincingly satisfied all four requisite elements.

A) *Reasonable Probability of Success*

WICO's strongest argument is that the Repeal Act violates the contract clause of the United States Constitution, Article I, Section 10 as contained in Section 3 of the Revised Organic Act of 1954.

The intervenors respond by challenging WICO's contract clause argument in two ways. First, they assert the transfer procedure in the 1973 Memorandum Agreement created additional conditions precedent necessary for WICO's rights, under the 1973 agreement, to mature. They refer to the federal conveyance discussed earlier and since these procedures were never followed, argue WICO lost its right to the land. Second, they claim the Repeal Act is a valid use of the Virgin Islands police power—a power which cannot be limited by contract. We take these arguments in sequence.

1) *WICO's Right to Submerged Land*

In tracing WICO's rights, we find these rights originated in the Danish grants of 1913 and were recognized and affirmed in the 1917 treaty between the United States and Denmark. In this treaty both countries intended to preserve WICO's right, in perpetuity, to obtain these submerged lands.[1]

The settlement to the 1968 litigation further defined WICO's rights to the submerged property. The Memorandum established specific conditions both the Virgin Islands and WICO were required to complete prior to closing on the land. Additionally, the transfer procedures were established to pass title from the United States through the Virgin Islands to WICO. These procedures state in relevant part:

> 6 CONVEYANCES
>
> (a) *General.* If the requirements of the Territorial Submerged Lands Act are met, the Secretary of the Interior shall convey to the Government of the Virgin Islands, and the Government of the Virgin Islands shall convey the Filled Lands and Submerged Lands hereinafter described (and the right to reclaim the same) in Long Bay, St. Thomas Harbor, in part to WICO and in part to the Byers group.

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[1] At oral argument, the attorney for the citizen intervenors stated that the "license" granted WICO in 1913 did not amount to a "fee simple" interest. The 1913 grant, however, states that ". . . when these land areas are reclaimed, the company will acquire free and unrestricted ownership thereof . . ." This certainly does provide for what we term "fee simple" ownership. In any event, it is clear that the Memorandum of Understanding and the addenda thereto were intended to provide fee simple ownership to WICO of the described lands. Finally, we note that even the complaint filed by the United States in Civ. No. 1968/337 recognized that the license granted WICO provided ". . . free and unrestricted exercise of property rights . . ."

The intervenors interpret these transfer procedures, and subsequent amendments to the Submerged Lands Act, in an unusual way. They assert these transfer procedures created additional conditions necessary for WICO's recognized preconditions, such as filling and dredging, they argue the transfer procedure had to be fulfilled prior to the 1974 amendments to the Submerged Lands Act. The reason for this concerns the title the Virgin Islands received in 1974.

The intervenors reason that prior to 1974, the United States held title to all submerged lands around the Virgin Islands, subject as we said, to WICO's rights. After the amendments to the Submerged Land Act in 1974, title to these lands reverted to the Government of the Virgin Islands to be held in trust for the people of the Virgin Islands albeit still subject to WICO's rights.[2] Up to this point WICO had not received title to these lands since both the recognized preconditions of the Memorandum Agreement, and the claimed preconditions from the transfer procedure, remained unfulfilled. At this point, however, intervenors argue that the Virgin Islands no longer had the ability to transfer title to WICO since it never held these lands in fee simple but as trustee for the people of the Virgin Islands. Since the Virgin Islands

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[2] The Submerged Lands Act states in relevant part:

> Subject to valid existing rights, all right, title, and interest of the United States in lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territories of Guam, the Virgin Islands, and American Samoa, as heretofore or hereafter modified by accretion, erosion, and reliction, and in artificially made, filled in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters, are hereby conveyed to the governments of Guam, the Virgin Islands, and American Samoa, as the case may be, to be administered in trust for the benefit of the people thereof.

48 U.S.C. § 1705(a) (Supp. 1986).

did not have title it could convey, any subsequent agreement to convey title was ineffective. We disagree with this analysis.

First, we disagree with the intervenors' characterization of section 6(a) of the Memorandum Agreement. This section does not create additional preconditions. On the contrary, it merely establishes ministerial acts which had to be performed in order to properly convey title.

Second, since the transfer procedures are not preconditions but ministerial acts, we also disagree with intervenors' legal interpretation of the relationship between 1974 amendments to the Submerged Land Act and the 1973 Memorandum. Contrary to the intervenors' assessment, this relationship does not, through an unforeseen series of events, create a situation which prevents WICO from ever receiving title to these lands. Rather, this relationship simply makes moot the transfer procedures. Once the recognized preconditions are satisfied, WICO will no longer seek title through the Virgin Islands from the United States but will simply receive title direct from the Virgin Islands. In effect, the transfer of title from the United States to the Virgin Islands eliminated the need for portions of section 6(a) of the Memorandum Agreement.

Evidence for this position is contained in the First Addendum to the 1973 Memorandum Agreement. The changes made in the First Addendum to the 1973 agreement are cosmetic and required only so the 1973 Memorandum Agreement comports with the Submerged Lands Act.

Third, and of significant import, the Submerged Lands Act makes its transfer in trust "[s]ubject to valid existing rights." 48 U.S.C. § 1705(a) (Supp.1986). WICO's rights were therefore preserved and recognized in this act, notwithstanding the fiduciary nature of the transfer.

Finally, we take issue with what we perceive are the two ways the intervenors seek to assert the public trust doctrine.[3] First, they claim prior elected officials did not have the authority to enter into any agreement which relinquished title to these lands, because these lands are held in trust and may never be conveyed. WICO, therefore, allegedly has no right to the property in question. Second, they seem to allege that the public trust doctrine may be cited as a legitimate public purpose for supporting the Repeal Act, to defeat WICO's Contract Clause claim. We feel compelled to address these contentions, if only because they were pressed with such force and vehemence. We note too that the same contentions permeated the legislative debate on repeal of WICO's rights.

a) *Public Trust Doctrine*

Land under tide waters has a special legal character. *State of Cal., Etc. v. United States*, 512 F.Supp. 36, 40 (N.D.Cal.1981). This special character was described by the Supreme Court in *Illinois Central R. Co. v. People of the State of Illinois*, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (1892) as:

> "a title different in character from that which the State holds in lands intended for sale. It is different from the title which the United States holds in public lands which are open to preemption and sale. It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing

[3] In the transfer of submerged lands from the United States to the Virgin Islands, the statute states this land will be "administered in trust for the benefit of the people thereof." 48 U.S.C. § 1705(a) (Supp. 1986). An additional source for this authority is derived from the power the Virgin Islands Government has as sovereign over these islands. J. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention" 68 *Mich. L. Rev.* 471 (1970). For the early history of this doctrine in America see *Shively v. Bowlby*, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331 (1894).

> therein freed from the obstruction or interference of private parties."

Illinois Central, supra, 146 U.S. at 452, 13 S.Ct. at 118.

The principle described in *Illinois Central* has come to be known as the public trust doctrine.[4]

In general, the public trust doctrine recognizes that some types of natural resources are held in trust by a government for the benefit of the public. W. Rogers Jr., *Environmental Law, supra* at 171 n.8. Historically the doctrine applied to lands below the low-water mark in the sea and great lakes, the waters over these lands, and the waters within navigable rivers and streams. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," 68 *Mich.L.Rev.* 471 (1970). We recognize that cases exist which support the intervenors' proposition that in general the trustee to trust lands is prohibited from selling these areas to anyone for a private purpose. *International Paper Co. v. Mississippi St. Hwy. Dept.*, 271 So.2d 395, 399 (Miss. 1972) *cert. denied* 414 U.S. 827, 94 S.Ct. 49, 38 L.Ed.2d 61 (1973). This prohibition however, is not absolute.

b) *Situations where Courts Recognize a Private Party's Title to Trust Lands*

In a number of situations courts have either upheld conveyances of trust lands to private interests, free of the

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[4] Prior to describing the parameters of this doctrine, we note one authority has commented that:

> Any attempt at a shorthand statement of the principles of public trust must come with a disclaimer: the constitutional and legislative variations among the states approach the infinite, and many states fulfill some of the identical policy functions under different doctrinal rubrics—prescriptive rights, customs, dedication or other property theory.

W. Rogers Jr. *Environmental Law,* § 2.16 (1977). We agree with this assessment concerning the law of public trusts and concur in this disclaimer.

trust, or have recognized title in a private party to trust lands. The following situations are pertinent to the case at bar.

[1] *Improvement of Navigation or When Public Trust is not Impaired*

Submerged lands can be conveyed to the use and control of private parties for the improvement of the navigation and use of the waters or when the parcels can be disposed of without impairment of the public interest in what remains. *Appleby v. New York*, 271 U.S. 364, 394, 46 S.Ct. 569, 578, 70 L.Ed. 992 (1926) (Supreme Court recognized title, free of the trust, in private persons to filled trust lands); *Illinois Central R. Co., supra* 146 U.S. at 453, 13 S.Ct. at 118. At least one state has held that in the proper administration of the trust, they may find it necessary to cut off certain tidelands from water access and render them useless for trust purposes. In these cases the State Legislature has the power to make this determination and free the lands from the trust. When such lands have been so freed, they may be irrevocably conveyed into absolute private ownership. *City of Long Beach v. Mansell*, 3 Cal.3d 462, 91 Cal.Rptr. 23, 36-38, 476 P.2d 423, 437-38 (1970) (in bank) (describing common law trust doctrine as opposed to the California Constitutional prohibitions against alienation of these lands).[5]

[2] *Settlement of Land Disputes*

The second instance involves settlement of land disputes. When title and boundaries to certain submerged and reclaimed trust lands are in dispute, a settlement between the local government and landowners will be enforced and will not be set aside based on an assertion that the settlement violates the public trust doctrine.

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[5] For examples of other states which include versions of the public trust doctrine in their respective constitutions see the state constitutions of Pennsylvania and Wisconsin.

City of Long Beach, supra. Groups not party to the original settlement will also be prevented from raising the doctrine to challenge titles granted pursuant to the settlement. *Amigos De Bolsa Chica v. Signal Properties,* 142 Cal.App.3d 166, 190 Cal.Rptr. 798 (1983).

[3] *International Duty*

Governments may recognize title in private individuals to trust property pursuant to an international duty, even though the original alienation of submerged lands may conflict with the public use doctrine. *Summa Corp. v. California ex rel. State Lands Comm'n,* 466 U.S. 198, 206-207 n. 4, 104 S.Ct. 1751, 1756 n. 4, 80 L.Ed.2d 237 (reh'g den.), 467 U.S. 1231, 104 S.Ct. 2693, 81 L.Ed.2d 886 (1984); *Montana v. United States,* 450 U.S. 544, 552, 101 S.Ct. 1245, 1251, 67 L.Ed.2d 493 (reh'g den.), 452 U.S. 911, 101 S. Ct. 3042, 69 L.Ed.2d 414 (1981).

The facts in *Summa, supra,* are remarkably similar to those before us. The petitioners' title to the land in question dated back to 1839 when the Mexican Governor of California granted title to the property to the petitioners' successors in interest. This property became part of the United States following the war between the United States and Mexico which was formally ended by the Treaty of Guadalupe Hidalgo in 1848. Under the terms of this treaty the United States undertook to protect the property rights of Mexican landowners. To both fulfill its obligations under the treaty and to provide for an orderly settlement of land claims, Congress passed the Act of March 3, 1951, setting up a comprehensive claims settlement procedure.

The succesors in interest followed the procedures provided in the Act and eventually the Secretary of Interior approved their claim and issued them a patent confirming their title. The Supreme Court noted as significant the fact that no mention of any public trust was made

in the patent and that California did not assert this interest during the confirmation hearings.

The precise issue before the Court was whether

> "a property interest [public trust easement] so substantially in derogation of the fee interest patented to petitioner's predecessors can survive the patent proceedings conducted pursuant to the statute implementing the Treaty of Guadalupe Hidalgo."

Summa, supra, 466 U.S. at 205, 104 S.Ct. at 1755.

In holding it could not, the Court stated:

> "Patents confirmed under the authority of the 1851 Act were issued pursuant to the authority reserved to the United States to enable it to discharge its international duty with respect to land which, although tideland, had not passed to the State."

Summa, supra at 205, 104 S.Ct. at 1756.

As we hope is by now obvious, the Supreme Court has approved recognition, by a government, of title in private hands to trust lands. WICO's original rights, like the original grants in *Summa*, occurred under the auspices of a foreign government and were subsequently recognized in a treaty with the United States. Both treaties predated that point in time when California and the Virgin Islands had control over the respective tidelands. The grants, therefore, occurred prior to the existence of the public trust doctrine. Pursuant to the international agreements, they should be upheld in the face of a challenge based on this doctrine.

The challenge to the 1973 settlement, like the challenges to the settlements in *City of Long Beach, supra*, and *Amigos, supra*, must also be rejected. As in those cases, in 1973 the United States, the Virgin Islands, and WICO were in contention over the extent and validity of WICO's right to reclaim 42 acres of land. The com-

promise at that time benefited both sides because it clearly acknowledged and defined WICO's rights to reduced portions of the submerged land. It is impermissible for the Sixteenth Legislature to extinguish WICO's rights under the settlement, arguing that prior public officials had no such authority to act. As we have seen, the highest court in the land has found similar acts reasonable and allowable.

Finally, we find that there is no impairment of the public trust in the reclamation and development such as proposed by WICO. *See, e.g., Appleby, supra.* In an analogous case, *City of Milwaukee v. State*, 193 Wis. 423, 214 N.W. 820 (1927), the Wisconsin Supreme Court citing to *Illinois Central, supra,* reiterated the proposition that title to submerged lands could be conveyed to private interests for reclamation when the lands could be disposed of without detriment to the public interest in the lands and waters remaining. *City of Milwaukee, supra* 214 N.W. at 832.

The Wisconsin Legislature granted submerged lands in Milwaukee's harbor to a steel company. The steel company intended to fill these submerged lands and construct docks and wharfs thereby creating employment and economic development.[6] The issue before the Wisconsin court was whether the State of Wisconsin, as a sovereign state of the Union, had the power to cede to Milwaukee, which in turn conveyed to the steel company, property held in trust free of the trust. *City of Milwaukee, supra* at 821. In holding that Wisconsin could do so, the court made a number of points relevant to WICO's situation.

Initially, the court recognized that normally these lands could not be conveyed to a private person. *Id.* at 830. The court then reviewed a number of circumstances

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[6] In the record before us, WICO plans to construct docks off its reclaimed lands for a marina, among other uses.

in which such conveyances are permitted. First, these lands would not damage any rights of other riparian owners or the public. *Id.* at 829. Second, the court deferred to the Legislative enactment and "presumed the Legislature had made an investigation of the entire situation" and concluded that other riparian owners or the public would not be harmed but, on the contrary, would benefit from the grant. *Id.* at 829. Third, the court reconciled the conveyance by stating it did not violate the public trust doctrine but actually promoted it. *Id.* at 830.[7] Finally, the court noted that the steel company, though "a private corporation operated for profit, . . . nevertheless is an important factor in the industrial life of the city and state". *Id.* at 830. All of these factors are relevant to our case.

The 7.5 acres to be reclaimed by WICO fronts land not used for marine purposes but as a housing project and park. The owners of this land are not utilizing their riparian rights in any way. There is no public beach or other particular form of public access—the original waterfront is simply unused shoreline.

The Virgin Islands Legislature, in Act No. 3326, had before it exhaustive studies of the issue and determined the present compromise was in the best interest of the Virgin Islands people. The intervenors consistently ignore how the 1973 compromise with WICO was in furtherance of the public interest. This is described in the Memorandum, to which Governor Evans affixed his signature and the seal of his office, the provisions of which the legislature sitting at the time ratified. We do well to recall the provisions.

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[7] The Wisconsin Court implied that if the Legislature had not allowed the conveyance, this failure would have amounted to "gross negligence and a misconception of [the Legislature's] proper duties and obligations". *Id.* 214 N.W. at 830.

For the people of the Virgin Islands, the conveyances to be made "satisfy a compelling public need" in the following respects:

(1) An additional 2½ acres will be added by WICO to the public recreation area near Pearson Garden, thus doubling its size;

(2) Filled land for the waterfront highway to permit widening from two to four lanes will be provided by WICO.

(3) Dredging the harbor in Long Bay will be provided by WICO, thereby benefiting navigation and promoting tourism;

(4) The reclamation will enlarge the area of level land for development near the downtown area of Charlotte Amalie now limited because of the hilly terrain;

(5) The development contemplated on the reclaimed lands for marinas, cruise ship berths, officers and other like facilities will provide additional employment for residents of St. Thomas and enhance tourism facilities;

(6) Termination of the remaining WICO rights under the Danish grant will eliminate a possible cloud over the future of St. Thomas harbor, enabling St. Thomas harbor to be developed on a limited, planned basis, subject to specific time limits.

Memorandum at pp. 7-8.

We find, accordingly, that there is ample precedent and authority for the actions taken by territorial officials in entering into the Memorandum and subsequent addenda, even under the public trust doctrine. For that further reason, WICO's rights should not be impaired.

2) *Police Power v. Contract Clause*

The parties, by asserting the Contract Clause and state police power for support of their respective positions, have placed a constitutional dilemma squarely before us. This dilemma involves the tension between constitutional protections offered to contracts, and the sovereign power to protect the health and welfare of the people.[8] This tension involves, on the one hand, a sovereign's unfettered power to protect the welfare of its people encountering the constitutional protections against state action found in the impairment clause. When a sovereign's action, which impairs contract rights, is allegedly motivated by a legitimate public purpose, this tension comes to a head.

Without question, it is settled law that states may pass statutes for the promotion of the commonwealth or for the good of the public, though they may impair the obligation of contracts. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241, 98 S.Ct. 2716, 2720, 57 L.Ed.2d 727 (reh'g den.), 439 U.S. 886, 99 S.Ct. 233, 58 L.Ed.2d 201 (1978). This reserved power "is an exercise of the sovereign right of a Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under con-

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[8] Police powers generally are those powers of sovereignty not given to the Federal Government exclusively by the United States Constitution, nor prohibited by that document to the states, nor reserved to the people. 2 C. Antieau, *Modern Constitutional Law*, § 10:1 (1969). The Supreme Court has described this power in *Parker v. Brown*, 317 U.S. 341, 359-60, 63 S.Ct. 307, 317-18, 87 L.Ed. 315 (1943) as follows:

> The governments of the states are sovereign within their territory save only as they are subject to the prohibitions of the Constitution or as their action in measure conflicts with powers delegated to the National Government, or with Congressional legislation enacted in the exercise of those powers.

Congress included police powers in its grant of power to the Virgin Islands in the Revised Organic Act. Rev.Organ.Act of 1954 § 3 (1967).

tract between individuals" *Allied, supra* at 241, 98 S.Ct. at 2721, citing *Manigault v. Springs*, 199 U.S. 473, 480, 26 S.Ct. 127, 130, 50 L.Ed. 274 (1905).

Juxtaposed against this sovereign power is the Contract Clause which unequivocally states:

> No State shall . . . pass any . . . Law impairing the Obligation of Contracts."

U.S. Const., Art. I § 10.[9] As can be seen, a tautological deadlock could easily ensue if a contract is impaired by a statute that has a claimed public purpose. Resolution of this deadlock is required because, as noted by the Supreme Court, "[i]f the Contract Clause is to retain any meaning at all . . . it must be understood to impose *some* [10] limits upon the power of a State to abridge existing contractual relationships even in the exercise of its otherwise legitimate police power." *Allied, supra* at 438 U.S. at 242, 98 S.Ct. at 2721. The *Allied* Court looked to five of its prior opinions to help define these limits. A brief review of these cases is warranted to determine the parameters of this conflict.

In *Home Building & Loan Asso. v. Blaisdell*, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed 413 (1934) the Court upheld Minnesota's police power against Contract Clause attack. There a mortgage moratorium statute was enacted to provide relief for homeowners threatened with foreclosure. This law conflicted with a lender's contractual foreclosure rights. The Court, however, acknowledged that despite the Contract Clause, States retain residual authority to safeguard the vital interests of their people. *Allied, supra* 438 U.S. at 242, 98 S.Ct. at 2721; *Blaisdell, supra* 290 U.S. at 434, 54 S.Ct. at 238. Five factors were significant in upholding this law.

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[9] This prohibition is also included in the Revised Organic Act. Rev.Organ.Act of 1954 § 3 (1967).

[10] Emphasis in the original.

> First, the state legislature had declared in the Act itself that an emergency need for the protection of homeowners existed. Second, the state law was enacted to protect a basic societal interest, not a favored group. Third, the relief was appropriately tailored to the emergency that it was designed to meet. Fourth, the imposed conditions were reasonable. And, finally, the legislation was limited to the duration of the emergency.

Blaisdell, supra at 444-47, 54 S.Ct. at 242-43.

It is implied in the *Blaisdell* opinion that if the moratorium legislation had not possessed the characteristics attributed to it by the Court, it would have been invalid under the Contract Clause.

In three subsequent cases, the Supreme Court honed its jurisprudence concerning contract clause limitations of a state's police power. In *W.B. Worthen Co. v. Thomas*, 292 U.S. 426, 54 S.Ct. 816, 78 L.Ed. 1344 (1934), the Court held invalid under the Contract Clause an Arkansas law that exempted the proceeds of a life insurance policy from collection by the beneficiaries. The Court stressed that the statute was not precisely and reasonably designed to meet a grave temporary emergency in the interest of the general welfare.

In *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 60, 55 S.Ct. 555, 556, 79 L.Ed 1298 (1935), the Court held invalid under the Contract Clause another Arkansas law stating "[e]ven when the public welfare is invoked as an excuse," . . . the security of a mortgage cannot be cut down 'without moderation or reason or in a spirit of oppression.'" *Allied, supra* 438 U.S. at 243, 98 S.Ct. at 2722; *Kavanaugh, supra*, 295 U.S. at 60, 55 S.Ct. at 557.[11]

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[11] Similarly, in *Treigle v. Acme Homestead Assn.*, 297 U.S. 189, 196, 56 S.Ct. 408, 410, 80 L.Ed. 575 (1936), the court, in holding a

Finally, in *United States Trust Co. v. New Jersey*, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed.2d 92 (1977), the Court held that legislative alteration of the rights and remedies of Port Authority bondholders violated the Contract Clause. *Id.* at 22, 97 S.Ct. at 1517. In its analysis the Court recognized a number of principles helpful to us. The Court again recognized that although the absolute language of the clause must leave room for the state's police power, that power has limits when its exercise effects substantial modifications of private contracts. *Allied Steel, supra* 438 U.S. at 244, 98 S.Ct. at 2722, *United States Trust, supra* 431 U.S. at 21, 97 S.Ct. at 1517.

Additionally, the Court recognized that despite the customary deference courts give to state laws directed to social and economic problems, legislation adjusting contract rights must be reasonable and of a character appropriate to the public purpose justifying its adoption. *Allied, supra* 438 U.S. at 244, 98 S.Ct. at 2722; *United States Trust, supra* 431 U.S. at 22, 97 S.Ct. at 1517. With these parameters in mind, we turn to examine WICO's Contract Clause claim.

a) *Substantial Impairment*

The threshold inquiry for Contract Clause issues is whether the statute has substantially impaired a contractual relationship. *Allied, supra* 438 U.S. at 244, 98 S.Ct. at 2722; *Keystone Bituminous Coal Assn. v. Duncan*, 771 F.2d 707, 717 (3d Cir.1985). In general a statute is considered a contract when "the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against the state." *United States Trust, supra* 431 U.S. at 17 n. 14 & 19-20 n. 17,

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Louisiana law invalid under the Contract Clause stated, "[s]uch an interference with the right of a contract cannot be justified by saying that in the public interest the operations of building associations may be controlled and regulated. . . ."

97 S.Ct. at 1515 n. 14 & 1516 n. 17. Here, the original settlement is clearly a contract and, following the above stated principle, the legislative ratification of the Memorandum is also considered a contract. That this contract has been impaired is a misnomer—it has been entirely eliminated.

By repealing both Acts Nos. 3326 and 4700, the Legislature repudiated prior approval of the Memorandum and Addenda, and cancelled the authority of the governor to enter into the agreements. This has the further effect of repudiating the agreement and WICO's rights recognized therein by the Government of the Virgin Islands.

The Repeal Act also places WICO on the same footing as any other entity in seeking development and occupancy of submerged lands, giving WICO no greater rights than provided in the Coastal Zone Management Act. Thus, the seal of the Legislature is put on a repudiation of WICO's original grant from the Government of Denmark, and the recognition of that grant by the Government of the United States. It is difficult to contemplate how the legislative elimination of WICO's rights could be more comprehensive.

The first step, therefore, is satisfied.

b) *Significant and Legitimate Public Purpose*

That WICO's rights have been completely eliminated is significant in our next inquiry. We must determine whether there is a significant and legitimate public purpose behind the law such as remedying broad and general social or economic problems. *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411, 103 S.Ct. 697, 704, 74 L.Ed.2d 569 (1983); *Keystone, supra* at 717, *Troy Ltd. v. Renna*, 727 F.2d 287, 297 (3d Cir.1984). The government has a difficult burden to overcome at this second stage because "[t]he severity of the impairment measures the height of the hurdle the [territorial] legislation must clear." *Allied Steel,*

supra 438 U.S. at 245, 98 S.Ct. at 2722. Minor alterations of contract rights may end the inquiry after the first stage while severe impairments "push the inquiry to a careful examination of the nature and purpose of the [territorial] legislation." *Id.* at 245, 98 S.Ct. at 2723. Since the Legislature has completely eliminated WICO's rights, we must carefully scrutinize the nature and purpose of the legislation.

Initially we note the existence of an important public interest alone is not always sufficient to overcome the Contract Clause limitation on legislative authority. *United States Trust*, *supra* 431 U.S. at 21, 97 S.Ct. at 1517. Without doubt, protection of our islands' submerged lands is an important public interest which the Legislature, through use of its police power, could protect by invoking the public use doctrine. That this is a legitimate public use sufficient to overcome WICO's contract rights is an entirely different matter.

As stated in our prior analysis, WICO's development may in fact serve a greater public purpose than leaving the submerged lands inviolate. At least, this has been the assessment of every elected governor of the Virgin Islands, and two elected legislatures. As stated earlier, this development fits within those situations approved by the Supreme Court, so it cannot be said that prior legislatures had no authority to make the agreements they adopted.[12] Additionally, the Repeal Act did not address

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[12] The intervenors assert correctly that one legislature can neither abridge the powers of a succeeding legislature nor bargain away the police power of the state. *United States Trust Co.*, *supra* 431 U.S. at 23, 97 S.Ct. at 1518. The Memorandum as amended, however, does not limit the government's ability to gain title to the filled lands. It specifically recognizes the right to exercise eminent domain. The action in repealing WICO's rights could be considered a "taking" of private property without just compensation in violation of the Revised Organic Act. Rev. Organ. Act of 1954 § 3 (1967). This is an alternative claim made by WICO in this law suit, but since we find the repeal invalid, we do not reach this point.

any broad and general social or economic problem. Rather, it can be argued, the Repeal Act exacerbates various existing problems.

Since the statute is solely directed at WICO, it can not be characterized as addressing a broad and general societal interest.[13] As the Supreme Court cautions, a law directed against a specific entity "can hardly be characterized . . . as one to protect a broad societal interest. . . ." *Allied, supra* 438 U.S. at 249, 98 S.Ct. at 2724.

The Repeal Act also fails to remedy an economic problem Rather, it contributes to the present economic distress in the islands by stifling development which would create new employment.[14]

Finally, unlike the situation in *Blaisdell*, where the Supreme Court upheld Minnesota's police power in the face of a Contract Clause attack, there is no emergency situation, similar to the Great Depression, here in the islands which the Repeal Act intends to address. Additionally, even assuming an emergency existed which the Repeal Act addressed, the act would still fail to pass constitutional scrutiny because the act is not limited to the duration of the emergency but purports to eliminate WICO's rights forever. *Blaisdell, supra* 290 U.S. at 434, 54 S.Ct. at 238.

3) *Adjustment of Rights*

Once a legitimate public purpose has been identified, the court must determine whether the adjustment of the

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[13] Indeed, as we will discuss later, if the repeal is valid, it will not have closed the door entirely on WICO, but conceivably will serve to reinstate all the rights WICO enjoyed under the treaty, thereby increasing the submerged lands subject to WICO's control, a result hardly intended by the Legislature.

[14] WICO intends to develop the land in question by building a hotel and marina. The Memorandum of Understanding in its preamble, (pp. 7-8) recites the economic benefits the government expects to reap by selling WICO's claim.

parties' rights and responsibilities is based upon reasonable conditions and is of a character appropriate to the legislations public purpose. *United States Trust, supra* 431 U.S. at 22, 97 S.Ct. at 1517. *Keystone, supra* at 717. For this third inquiry courts should defer to the legislative judgment as to the reasonableness of the particular measure if the state itself is not a contracting party. *United States Trust, supra* at 431 U.S. 22-23, 97 S.Ct. at 1517-18; *Keystone, supra* at 717. If the state is a contracting party, however, the court need not defer to the legislative judgment but is free to determine whether a less drastic modification would be sufficient. *United States Trust, supra* 431 U.S. at 30-32, 97 S.Ct. at 1521-23; *Keystone, supra* at 717; *Troy, supra* at 296. In WICO's case, of course, the government is a contracting party.

The repudiation of WICO's rights in the submerged land is neither based upon reasonable conditions nor of a character appropriate to the Legislature's public purpose. By repealing the prior settlement, the Government in effect no longer recognizes WICO's right to title in the submerged lands. This adjustment is drastic and has no reasonable basis. WICO intends to develop the new land into a marina-hotel complex. We note that tourism is a major industry in the Virgin Islands and one of the express goals of Acts Nos. 3326 and 4700, as well as other legislation, is to promote and assure priority for coastal-dependent economic development, such as hotels and marine facilities. *See also* 12 V.I.C. § 903(b)(3) (1982). Hotel and marine facilities are a common use for coastal zone areas. By extinguishing WICO's rights, the Legislature acted unreasonably. Its position finds no support in any hypothetical public policy, but it violates the stated public policy of an act intended to address the issues of coastal protection and development.

B) *Irreparable Harm*

WICO has demonstrated it will be irreparably harmed should it be unable to continue dredging operations.

1) *Constitutional Violation*

Interference with constitutional rights is considered irreparable injury. *Planned Parenthood v. Citizens For Com. Action*, 558 F.2d 861, 867 (8th Cir.1977); *Henry v. Greenville Airport Commission*, 284 F.2d 631, 633 (4th Cir.1960). The interference with WICO's contractual rights in violation of the Contract Clause, standing alone, is sufficient irreparable harm to support the result we reach.

2) *Economic Loss*

The possibility of significant economic losses, in addition to the constitutional interference, strengthens WICO's argument that it will be irreparably harmed. Normally, a defendant's ability to compensate a plaintiff with money damages precludes the issuance of a preliminary injunction. *Nuclear-Chicago Corp. v. Nuclear Data Inc.*, 465 F.2d 428, 430 (7th Cir.1972). A court may, however, look to the financial strength of a defendant to determine whether or not a defendant could compensate the petitioner with money damages. *Eli Lilly & Co. v. Premo Pharmaceutical Labs*, 630 F.2d 120, 137 (3d Cir.), *cert. denied*, 449 U.S. 1014, 101 S.Ct. 573, 66 L.Ed.2d 473 (1980).

We have no difficulty taking judicial notice that the Virgin Islands government is in difficult financial straits. We have had numerous cases in front of us in which persons with legitimate claims against the government in the multiple millions of dollars have been unable to obtain funds owing them. In each instance, government attorneys have cited the lack of funds with which to pay, and the debts remain unpaid to this day. Included among the claims are those which would have the highest

priority, i.e., payments to employees of the government owing for several years. In addition, even if the funds were available, the government could refuse to make payment. Being exempt from levy and execution, it could not be forced to alter such a posture.

Additionally, WICO has already paid more than half a million dollars on a dredging contract. More than 60,000 tons of fill are in place and at risk of being washed away should a serious storm arise. There is no question WICO would suffer irreparable harm even without the constitutional violation.[15]

C. *Other Relevant Elements*

We have covered thus far the two central elements necessary for a preliminary injunction under the holding of *Professional Plan, supra.* They are the reasonable probability of eventual success in the litigation, and that the movant will be irreparably harmed if relief is not granted. As our discussion began, we noted that *Professional Plan* contemplated two additional elements when relevant. These are the possibility of harm to other interested persons from the grant or denial of the injunction, and the public interest.

We take these two elements together because they are intertwined. The citizen intervenors have cited no direct possibility of harm to themselves or others in the community, apart from the public interest which they seek to protect. Our disagreement is whether the public interest is served or harmed by permitting the continued

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[15] At this time the reclaiming work is not complete. A dredge fill dike has been erected on the seaward side. Behind this is a settling pond where the 60,000 tons of dredge spoil have been deposited. Placement of rock armor has commenced but is incomplete. The rock armor is designed to protect the reclaimed land from erosion from the ocean. Should a storm hit St. Thomas prior to completion of the rock armor, there is a risk of the reclaimed land being washed away.

reclamation of land by WICO for the purposes contained in the agreements.

The public interest sought to be implemented in the Memorandum in favor of the people of the Virgin Islands is substantial. We described the benefits to be gained by the government and its citizens outlined in the Memorandum and will not repeat them here. To permit WICO to assert its rights pursuant to the Memorandum and Addenda serves the public interest. To adopt the intervenors' arguments in favor of halting the dredging and upholding the repeal of WICO's rights, would invite chaos.

We refer to a point touched on several times earlier in this opinion. If the repeal is permitted, as we view the law it would not, as an end result, eliminate WICO's rights in Charlotte Amalie harbor. Rather, it would expand then [sic] back to the original rights contained in the concession from the Government of Denmark in 1913. These rights have been forcefully recognized by the signatories to the 1917 Treaty, i.e., Denmark and the United States. They include nearly triple the reclamation potential contained in the Memorandum and Addenda, and the use of the reclaimed land would not be subject to the restrictions contained in the Memorandum.

The public interest would not be served by the possibility of a return to such a situation. For this reason, we find that the granting of a preliminary injunction, permitting WICO to exercise the limited rights agreed to in the Memorandum, would better serve the government and people of the Virgin Islands than the spectre of reinstatement of the vastly enlarged rights contained in the 1913 concession.

III. CONCLUSION

We find that WICO has satisfied all of the conditions necessary for a preliminary injunction. In reaching that conclusion, we have covered the legal bases a court must consider when confronting the issues presented herein. But we cannot close without addressing the matter from a larger perspective than the nuts and bolts of *stare decisis*. We speak of questions of honor and the integrity of one's promises. They apply with no less force to government than to others. In this instance, the only three elected governors the territory has ever had and their respected attorneys general, acting with the men and women elected to two separate legislatures, bound themselves and the government to promises solemnly given. If what they did in good faith and in pursuit of their vision of the public interest is to be lightly discarded many years later, we ask: who would without trembling and consternation, deal with such a government in the future? And who, ultimately would be the loser? The question answers itself. The people of the Virgin Islands would suffer the loss of their government's promises are considered as will-o-the-wisp, to be kept when convenient, and broken as desired.

We acknowledge that the citizen intervenors' views are honestly come by and sincerely held. Their promotion of the public interest as they view it cannot be deprecated. We only regret that on the issues in this case, our own view of that public interest diverges from theirs.

All persons interested in this controversy would do well to read *United States v. 119.67 Acres of Land*, 663 F.2d 1328 (5th Cir.1981). This case was cited at oral argument and pursuasively supports our decision. Under a subsection entitled "Binding the Government to its Word," there appear the following words:

> The Government does not deny the words, or even the agreement, which it, together with its adver-

> saries, importuned the District Court to approve. On the contrary, acknowledging in the best Boy Scout tradition the words spoken, the agreements made, and the consensual judgment entered, the Government, now claiming to be adorned with the protective armor against which neither equities nor accepted morality may penetrate, takes the simple, but awesome position that what it agreed to was of no moment because it was *mistaken*[16] on the operative facts.

119.67 Acres, at § 333.

Our attitude is similar to that of the Fifth Circuit in discussing promises made by the United States. The Legislature of the Virgin Islands should not be permitted to ignore its word of honor pledged in the agreements with WICO, carrying the entire Government of the Virgin Islands along with it.

A preliminary injunction will issue enjoining interference with WICO's rights under the Memorandum of Understanding and Addenda thereto.

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[16] Emphasis in the original.

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

Civil No. 337-1968

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE WEST INDIAN COMPANY LIMITED, also known as DET VESTINDISKI KOMPAGNI; JOSEPH BYERS II; MAJOR BYERS INVESTMENT ASSOCIATES; FORD WRIGHT, JR.; ADRIAN PEREZ-AGUDO; ALBERT B. POE; JORGE SOUSS; JOSE BLANCO LUGO; ISLAND HOTELS, LTD.;
Defendants.

ACTION TO QUIET TITLE

COMPLAINT

The United States of America, by Almeric L. Christian, United States Attorney, acting by and upon the direction of the Attorney General of the United States, complains of the defendants and alleges:

I

This is a civil action brought by the United States of America, and the jurisdiction of the Court is based upon 28 U.S.C. sec. 1345 and 48 U.S.C. sec. 1612.

II

Certain real property which is the subject of this action is located in St. Thomas, Virgin Islands.

III

By communications of January 18, 1913 and April 16, 1913, from the Danish Ministry of Finance, the West Indian Company, Ltd., also known as Det vestindiski Kompagni, was granted a license to embank, drain, deepen and utilize certain areas in St. Thomas Harbor. The license provided that, under certain circumstances, when land areas are reclaimed, the Company shall have free and unrestricted exercise of property rights over them.

IV

The West Indian Company, Ltd. (hereafter referred to as Company) did a limited amount of dredging, filling and improvement in the area covered by the license in 1913 or 1914. The shoreline in the area covered by the license after completion of this work is shown by a map, U.S. Coast and Geodetic Survey Register No. T-3771.

V

The Company has not filled in any land so as to add land to the shoreline in the area covered by the license since 1914.

VI

The United States in accepting a cession of the Virgin Islands from Denmark in 1917 recognized the license granted to the Company. See 39 Stat. 1706 (1915-1917).

VII

In 1935 the U. S. Army Corps of Engineers added fill land to the 1918 shoreline as a part of Federal Project No. 70, which project on completion reclaimed certain swampland and made the harbor of St. Thomas more navigable. In the area covered by the license to the Company, this fill extended the shoreline and increased the land area of that part of St. Thomas Harbor; as noted below Lot. Nos. 4 and 5, Estate Thomas, King's Quarter,

Virgin Islands, have subsequently been treated as including this fill land.

VIII

The Corps of Engineers prepared a map identified as St. Thomas, V. I., Long Bay and Vicinity, Swamp Reclamation, Federal Project No. 70, dated June 17, 1935, that showed the shoreline as it existed in the area covered by the Company's 1913 license prior to the start of Federal Project No. 70. Hereafter this map is referred to as Pre-Government Fill Shoreline Map.

IX

By warranty deed dated August 18, 1956, the Company conveyed to Major Byers Investment Associates certain uplands (identified as Lot No. 4, Estate Thomas, King's Quarter, St. Thomas, Virgin Islands) bordering on the harbor area covered by the 1913 license. Included within the description of lands conveyed are fill lands created by the Corps of Engineers in connection with Federal Project No. 70.

X

By warranty deed dated September 11, 1956, the Company conveyed to Joseph Byers II certain uplands (identified as Lot No. 5 Estate Thomas, King's Quarter, St. Thomas, Virgin Islands) bordering on the harbor area covered by the 1913 license. Included within the description of lands conveyed are fill lands created by the Corps of Engineers in connection with Federal Project No. 70.

XI

By warranty deed dated February 15, 1961, Joseph Byers II and Ethel F. Byers, husband and wife, conveyed to the Government of the Virgin Islands certain uplands (identified as Lot No. 5A Estate Thomas, King's Quarter, St. Thomas, Virgin Islands) which were included in the deed of September 11, 1956, mentioned in paragraph 10 above.

XII

By deed dated April 9, 1965, Joseph Byers II conveyed to Major Byers Investment Associates all of his right, title and interest in certain uplands (identified as Lot 5 Estate Thomas, St. Thomas, Virgin Islands) which were included in the deed of September 11, 1956, mentioned in pargaraph 10 above.

XIII

By warranty deed dated October 19, 1966, Major Byers Investment Associates conveyed to Ford Wright, Jr., Adrian Perez-Agudo, and Albert B. Poe certain uplands (identified as Parcel No. 5 Estate Thomas, King's Quarter, St. Thomas, Virgin Islands) bordering on the harbor area covered by the 1913 license. Included within the description of the lands conveyed are fill lands created by the Corps of Engineers in connection with Federal Project No. 70, and fill lands created by the Government of the Virgin Island in the 1964 period. The grantees of this deed subsequently sold to Jorge Souss and Jose Blanco Lugo a one-fourth share and undivided interest in this same parcel of land.

XIV

The United States alleges that all fill land seaward of the shoreline shown in the Pre-Government Fill Shoreline Map, including that filled by the Government of the Virgin Islands in the 1964 period, is owned by the United States, and that the license granted to the Company in 1913 terminated prior to July 11, 1933, when the Governor of the Virgin Islands noted in a memorandum to the Assistant Secretary of the Interior that the harbor had not been dredged for more than 20 years. Provided, however, that this allegation only relates to the harbor area covered by the 1913 license.

WHEREFORE, plaintiff prays:

1. That it be adjudged that the defendants' claims to the filled lands seaward of the shoreline shown by the Pre-Government Fill Shoreline Map, within the area covered by the 1913 license, are invalid, and that the plaintiff is the owner of said lands and is entitled to the quiet enjoyment and peaceable possession thereof.

2. For plaintiff's costs herein and for such other and further relief as the Court deems proper.

/s/ Almeric L. Christian
ALMERIC L. CHRISTIAN
United States Attorney

/s/ David W. Miller
DAVID W. MILLER
Attorney, Department of Justice
Washington, D. C. 20530
Attorneys for the Plaintiff.

DISTRICT COURT OF THE VIRGIN ISLANDS
OF THE UNITED STATES

September 19, 1972

Governor Melvin Evans
Government House
Charlotte Amalie, St. Thomas

Dear Governor Evans:

As you know, the United States Government is currently litigating a case against the West Indian Company in this court. The pretrial conferences have been held and the case is scheduled for trial next month. The purpose of the suit is to quiet title to certain waterfront lands which lie within the original concession area granted to WICO and guaranteed by the 1917 treaty with Denmark. The Government has, however, raised a number of contentions tending to show that the concession has terminated.

I am writing to suggest that a compromise settlement may be desirable. Although the Virgin Islands is not formally a party to this action, it would be a principal beneficiary of any Government victory. I therefore suspect that if your views were conveyed to the Secretary of the Interior they could substantially affect the conduct of this litigation. I suggest the compromise for two reasons. First, WICO's settlement offer, presented at public hearings last October 26th, appears generous and would seem to give the Government all that it is seeking in the suit. Secondly, I am inclined to believe that WICO will prevail on the merits if this case is carried forward to trial. I am enclosing a flow sheet showing the major issues involved, with the darker line indicating how I believe they may be resolved.

I must emphasize, of course, that this is only a preliminary evaluation. I have not yet considered this case in detail. More particularly, I have not heard the argu-

ments of counsel or received specialized evidence on Danish law. In consequence my opinion here cannot be considered binding, and I might well have occasion to revise it at trial.

I might, however, comment on one apparent obstacle to settlement. WICO proposes to quitclaim to the Government those tracts on which the Government now has a claim, plus some others, but would retain the right to create fill lands in the harbor at the base of Bluebeard's Castle. The proposal is illustrated on the enclosed map. It might be that the Government is most concerned about WICO's last reservation, since construction there might be considered by some to have a detrimental effect on the beauty of the waterfront. Some compromise has since been effected on this point, but the two parties might give additional attention to these aesthetics in any further negotiations.

I am sending copies of this letter to members of the legislature with whom your decision might be shared, and to all interested counsel.

In conclusion I should emphasize that the outcome of this case remains sufficiently uncertain to make the further exploration of compromise settlement seem a worthwhile undertaking for all concerned. Trial will begin on October 10th; but even after lengthy litigation here, the lands at stake are so valuable that the unsucccessful party may well be motivated to take an appeal. This would deny a workably clear title to anyone for several more years, which seem regrettable in as rapidly growing an area as St. Thomas.

Very truly yours,

/s/ Warren H. Young
WARREN H. YOUNG

WHY:jve

cc: W.W. Bailey, Esq.
Thomas D. Ireland, Esq.
Sanford C. Miller, Esq.
David W. Miller, Esq.
Senator Earl B. Ottley
Senator Athniel C. Ottley
Senator Felix A. Francis
Senator Jaime Garciaz
Senator John L. Maduro
Senator Claude A. Molloy
Senator Alexander A. Moorhead, Jr.
Senator David A. Puritz
Senator Percival H. Reese
Senator Elroy A. Sprauve
Senator Philip C. Clark
Senator Hector L. Cintron
Senator George G. O'Reilly, Jr.
Senator Ariel A. Melchior, Jr.
Senator Virnin C. Brown

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISON OF ST. CROIX

Civil No. 337/1968

UNITED STATES OF AMERICA,
Plaintiff

-vs-

WEST INDIAN COMPANY, LTD.,
Defendant

ORDER

A Memorandum of Understanding, dated October 3, 1973, and signed by all the parties to the above litigation, has been brought to the Court's attention.

WHEREAS, the above Memorandum obligates the West Indian Company, Ltd. to make certain landfills in St. Thomas harbor, which landfills may require a year and a half or more; and

WHEREAS, disagreements may arise as to the satisfactory performance of the above conditions, or of other conditions included in the Memorandum,

It is hereby ORDERED:

1. That the cause be continued *sine die* until in the Court's judgment the affirmative obligations of the parties under the Agreement are performed; and

2. That all parties report to the Court at 90 day intervals as to the progress of the performance of conditions, the first report to be submitted March 1, 1974.

Dated at Christiansted, St. Croix,
this 27th day of December, 1973.

ENTER:

/s/ Warren H. Young
WARREN H. YOUNG
Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Civil Action No. 87-3369

WEST INDIAN CO.

v

GOVERNMENT OF THE VIRGIN ISLANDS

December 7, 1987

CORAM: GIBBONS, STAPLETON AND MANSMANN

* * * *

[38] THE COURT: In any event, there is no statute that anybody has referred to which provides for indemnification of private attorneys general (unintelligible).

MR. BAKER: No, the statutes—the code does not provide as I have read it. For the executive branch of the government or any part thereof to indemnify persons who wish to act as applied in this manner. I think that the claims—the arguments of the government are well set forth in the brief and I don't think that—unless you have any other questions, I don't think it's necessary to articulate them.

THE COURT: Thank you. Is there some time reserved for rebuttal?

MS. HOLLAR: May it please the court, my name is Brenda Hollar and I represent Helen W. Gjessing and Save the Long Bay Coalition. [39] And I will respond to partial rebuttal to arguments that have been raised by appellees.

First of all, I would like to state that our position is that the settlement agreements, all of the settlement agreements are invalid because they tend to modify treaty rights and it is our position—I don't believe that we have cited it within our brief but we do rely on section eight of the Revised Organic Act of 1954 and that's section 8-A which precludes or [sic] the legislature from in any way moidfying or impairing treaty rights and in that regard it is our position that all of the settlement agreements had that particular objective and, therefore, any acts by the legislature were ultra vires and totally in violation of the Revised Organic Act as enacted by Congress.

THE COURT: Wouldn't the consequence of that be then that WICO can rely on the treaty all alone?

MS. HOLLAR: Yes, Your Honor. We have to come to grips with that, that at this point—

[40] THE COURT: If we wipe out the settlement—

MS. HOLLAR: Yes, Your Honor, correct.

THE COURT: The result may well be that WICO has more rights.

MS. HOLLAR: I'm sorry?

THE COURT: If we wipe out the settlement, the result may be that WICO has more rights.

MS. HOLLAR: Well, Your Honor, it's our position—

THE COURT: You are only asking for 15 acres.

MS. HOLLAR: That's correct, Your Honor.

THE COURT: They may wind up with a good deal more than that.

MS. HOLLAR: They claim 42 acres, Your Honor, under the treaty, and it is our position—

THE COURT: If you are right that the settlement legislation was void as inconsistent [41] with the (unintelligible) Organic Act. We have to face up to whether or not they have (unintelligible).

MS. HOLLAR: That's correct, Your Honor. And this is what we are facing and we want to face because that then goes to the reopening of the 1968 case for purposes of resolving the dispute and the interpretation of

the treaty with respect to WICO's rights and I would like to emphasize that it's the position of the citizens that it's better to have police powers on the 42 acres than to relinquish and surrender all of their police powers with respect to 15 acres.

THE COURT: The treaty can limit police powers.

MS. HOLLAR: Your Honor, we believe that an interpretation—

THE COURT: Many treaties limit police powers.

MS. HOLLAR: Yes, Your Honor. We understand that these are debates that have not ever been heard on the merits and it is our [42] contention that if we were given an opportunity to prove what the treaty rights were, we can prove that police powers were contemplated all along from the 1913 letters on the 42 acres and that when it was transferred to the United States in 1917 it was transferred with those police powers intact.

THE COURT: Police powers going so far as to say that you can convert an actual or potential fee into a tenancy for 20 years at market rates?

MS. HOLLAR: I'm sorry? I didn't understand.

THE COURT: It's one thing to say that rights conveyed under a concession to WICO were subject to police power in some respects. It's quite another thing to say that police power extended to the extent of converting an absolute right to a term of years.

MS. HOLLAR: Your Honor—

THE COURT: Subject to market rates.

MS. HOLLAR: I understand your position, Your Honor, but it's our position [43] that the treaty rights that were given to WICO did not contemplate anything more than a license and a right after complying with certain conditions to own the property in fee simple and it's because of that particular situation that we contend that rule against perpituities were applicable at that time as well as some interpretation as to reasonableness in fulfilling those particular interpretations as to when they could fulfill those rights.

THE COURT: Do you refer to WICO as WICO or WICO?

MS. HOLLAR: WICO, West Indian Company.

THE COURT: WICO?

THE COURT: Your time is up.

MS. HOLLAR: Yes, sir.

THE COURT: Will counsel arrange with our clerk to have prepared a transcript of the oral argument in this case? That can be done afterwards.

(Pause)

* * * *

[47] CERTIFICATE

I, Michael Feuer, C.S.R., do hereby certify the foregoing to be a true and accurate transcript.

I do further certify that I am a disinterested person in this cause of action and that I am not a relative or attorney of any of the parties or otherwise interested in the action.

/s/ Michael Feuer
MICHAEL FEUER
C.S.R.

CONVENTION BETWEEN THE UNITED STATES AND DENMARK, ETC.

TREATY SERIES, NO. 629

CONVENTION
BETWEEN
THE UNITED STATES AND DENMARK
39 STAT. 1706

CESSION OF THE DANISH WEST INDIES

SIGNED AT NEW YORK, AUGUST 4, 1916

RATIFICATION ADVISED BY THE SENATE, SEPTEMBER 7, 1916
RATIFIED BY THE PRESIDENT JANUARY 16, 1917
RATIFIED BY DENMARK, DECEMBER 22, 1916
RATIFICATIONS EXCHANGED AT WASHINGTON, JANUARY 17, 1917
PROCLAIMED, JANUARY 25, 1917

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas a Convention between the United States of America and Denmark providing for the cession to the United States of all territory asserted or claimed by Denmark in the West Indies, including the islands of St. Thomas, St. John and St. Croix, together with the adjacent islands and rocks, was concluded and signed by

their respective Plenipotentiaries at the City of New York on the fourth day of August, one thousand nine hundred and sixteen, the original of which Convention, being in the English and Danish languages, is word for word as follows:

The United States of America and His Majesty the King of Denmark being desirous of confirming the good understanding which exists between them, have to that end appointed as Plenipotentiaries:

The President of the United States:

Mr. Robert Lansing, Secretary of State of the United States, and His Majesty the King of Denmark:

Mr. Constantin Brun, His Majesty's Envoy extraordinary and Minister plenipotentiary at Washington.

who, having mutually exhibited their full powers which were found to be in due form, have agreed upon the following articles:

Article 1.

His Majesty the King of Denmark by this convention cedes to the United States all territory, dominion and sovereignty, possessed, asserted or claimed by Denmark in the West Indies including the Islands of Saint Thomas, Saint John and Saint Croix together with the adjacent islands and rocks.

This cession includes the right of property in all public, government, or crown lands, public buildings, wharves, ports, harbors, fortifications, barracks, public funds, rights, franchises, and privileges, and all other public property of every kind or description now belonging to Denmark together with all appurtenances thereto.

In this cession shall also be included any government archives, records, papers or documents which relate to the cession or the rights and property of the inhabitants of the Islands ceded, and which may now be existing

either in the Islands ceded or in Denmark. Such archives and records shall be carefully preserved, and authenticated copies thereof, as may be required shall be at all times given to the United States Government or the Danish Government, as the case may be, or to such properly authorized persons as may apply for them.

Article 2.

Denmark guarantees that the cession made by the preceding article is free and unencumbered by any reservations, privileges, franchises, grants, or possessions, held by any governments, corporations, syndicates, or individuals, except as herein mentioned. But it is understood that this cession does not in any respect impair private rights which by law belong to the peaceful possession of property of all kinds by private individuals of whatsoever nationality, by municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the Islands ceded.

The congregations belonging to the Danish National Church shall retain the undisturbed use of the churches which are now used by them, together with the parsonages appertaining thereunto and other appurtenances, including the funds allotted to the churches.

Article 3.

It is especially agreed, however, that:

1) The arms and military stores existing in the Islands at the time of the cession and belonging to the Danish Government shall remain the property of that Government and shall, as soon as circumstances will permit, be removed by it, unless they, or parts thereof, may have been bought by the Government of the United States; it being however understood that flags and colors, uniforms and such arms or military articles as are

marked as being the property of the Danish Government shall not be included in such purchase.

2) The movables, especially silver plate and pictures which may be found in the government buildings in the islands ceded and belonging to the Danish Government shall remain the property of that Government and shall, as soon as circumstances will permit, be removed by it.

3) The pecuniary claims now held by Denmark against the colonial treasuries of the islands ceded are altogether extinguished in consequence of this cession and the United States assumes no responsibility whatsoever for or in connection with these claims. Excepted is however the amount due to the Danish Treasury in account current with the West-Indian colonial treasuries pursuant to the making up of accounts in consequence of the cession of the islands; should on the other hand this final accounting show a balance in favour of the West-Indian colonial treasuries, the Danish Treasury shall pay that amount to the colonial treasuries.

4) The United States will maintain the following grants, concessions and licenses, given by the Danish Government, in accordance with the terms on which they are given:

a. The concession granted to "Det vestindiske Kompagni" (the West-Indian Company) Ltd. by the communications from the Ministry of Finance of January 18th 1913 and of April 16th 1913 relative to a license to embank, drain, deepen and utilize certain areas in St. Thomas Harbor, and preferential rights as to commercial, industrial or shipping establishments in the said Harbor.

b. Agreement of August 10th and 14th, 1914 between the municipality of St. Thomas and St. John and "Det vestindiske Kompagni" Ltd. relative to the supply of the city of Charlotte Amalie with electric lighting.

c. Concession of March 12th 1897 to "The Floating Dock Company of St. Thomas Ltd.", subsequently transferred to "The St. Thomas Engineering and Coaling Company Ltd." relative to a floating dock in St. Thomas Harbor, in which concession the maintenance, extension, and alteration of the then existing repairing slip are reserved.

d. Royal Decree Nr. 79 of November 30th 1914 relative to the subsidies from the colonial treasuries of St. Thomas and Sainte Croix to "The West Indian and Panama Telegraph Company Ltd."

e. Concession of November 3rd, 1906, to H. B. Hey to establish and operate a telephone system on St. Thomas island, which concession has subsequently been transferred to the "St. Thomas Telefonselskab" Ltd.

f. Concession of February 28th 1913 to the municipality of Sainte Croix to establish and operate a telephone system in Sainte Croix.

g. Concession of July 16th 1915 to Ejnar Svendsen, an Engineer, for the construction and operation of an electric light plant in the city of Christiansted, Sainte Croix.

h. Concession of June 20th 1904 for the establishment of a Danish West-Indian bank of issue. This bank has for a period of 30 years acquired the monopoly to issue bank-notes in the Danish West India islands against the payment to the Danish Treasury of a tax amounting to ten percent of its annual profits.

i. Guarantee according to the Danish supplementary Budget Law for the financial year 1908-1909 relative to the St. Thomas Harbor's four percent loan of 1910.

5) Whatever sum shall be due to the Danish Treasury by private individuals on the date of the exchange of ratifications are reserved and do not pass by this cession; and where the Danish Government at that date holds property taken over by the Danish Treasury for sums

due by private individuals, such property shall not pass by this cession, but the Danish Government shall sell or dispose of such property and remove its proceeds within two years from the date of the exchange of ratifications of this convention; the United States Government being entitled to sell by public auction, to the credit of the Danish Government, any portion of such property remaining unsold at the expiration of the said term of two years.

6) The Colonial Treasuries shall continue to pay the yearly allowances now given to heretofore retired functionaries appointed in the islands but holding no Royal Commissions, unless such allowances may have until now been paid in Denmark.

Article 4.

The Danish Government shall appoint with convenient despatch an agent or agents for the purpose of formally delivering to a similar agent or agents appointed on behalf of the United States, the territory, dominion, property, and appurtenances which are ceded hereby, and for doing any other act which may be necessary in regard thereto. Formal delivery of the territory and property ceded shall be made immediately after the payment by the United States of the sum of money stipulated in this convention; but the cession with the right of immediate possession is nevertheless to be deemed complete on the exchange of ratifications of this convention without such formal delivery. Any Danish military or naval forces which may be in the islands ceded shall be withdrawn as soon as may be practicable after the formal delivery, it being however understood that if the persons constituting these forces, after having terminated their Danish services, do not wish to leave the Islands, they shall be allowed to remain there as civilians.

Article 5.

In full consideration of the cession made by this convention, the United States agrees to pay, within ninety days from the date of the exchange of the ratifications of this convention, in the city of Washington to the diplomatic representative or other agent of His Majesty the King of Denmark duly authorized to receive the money, the sum of twenty-five million dollars in gold coin of the United States.

Article 6.

Danish citizens residing in said islands may remain therein or may remove therefrom at will, retaining in either event all their rights of property, including the right to sell or dispose of such property or its proceeds; in case they remain in the Islands, they shall continue until otherwise provided, to enjoy all the private, municipal and religious rights and liberties secured to them by the laws now in force. If the present laws are altered, the said inhabitants shall not thereby be placed in a less favorable position in respect to the above mentioned rights and liberties than they now enjoy. Those, who remain in the islands may preserve their citizenship in Denmark by making before a court of record, within one year from the date of the exchange of ratifications of this convention, a declaration of their decision to preserve such citizenship; in default of which declaration they shall be held to have renounced it, and to have accepted citizenship in the United States; for children under eighteen years the said declaration may be made by their parents or guardians. Such election of Danish citizenship shall however not, after the lapse of the said term of one year, be a bar to their renunciation of their preserved Danish citizenship and their election of citizenship in the United States and admission to the nationality thereof on the same terms as may be provided according to the laws of the United States, for other inhabitants of the islands.

The civil rights and the political status of the inhabitants of the islands shall be determined by the Congress, subject to the stipulations contained in the present convention.

Danish citizens not residing in the islands but owning property therein at the time of the cession, shall retain their rights of property, including the right to sell or dispose of such property, being placed in this regard on the same basis as the Danish citizens residing in the islands and remaining therein or removing therefrom, to whom the first paragraph of this articles relates.

Article 7.

Danish subjects residing in the Islands shall be subject in matters civil as well as criminal to the jurisdiction of the courts of the Islands, pursuant to the ordinary laws governing the same, and they shall have the right to appear before such courts, and to pursue the same course therein as citizens of the country to which the courts belong.

Article 8.

Judicial proceedings pending at the time of the formal delivery in the islands ceded shall be determined according to the following rules:

1) Judgments rendered either in civil suits between private individuals, or in criminal matters, before the date mentioned, and with respect to which there is no recourse or right to review under Danish law, shall be deemed to be final, and shall be executed in due form and without any renewed trial whatsoever, by the competent authority in the territories within which such judgments are to be carried out.

If in a criminal case a mode of punishment has been applied which, according to new rules, is no longer applicable on the islands ceded after delivery, the nearest

corresponding punishment in the new rules shall be applied.

2) Civil suits or criminal actions pending before the first courts, in which the pleadings have not been closed at the same time, shall be confirmed before the tribunals established in the ceded islands after the delivery, in accordance with the law which shall thereafter be in force.

3) Civil suits and criminal actions pending at the said time before the Supreme Court or the Supreme Court in Denmark shall continue to be prosecuted before the Danish courts until final judgment according to the law hitherto in force. The judgment shall be executed in due form by the compentent authority in the territories within which such judgment should be carried out.

Article 9.

The rights of property secured by copyrights and patents acquired by Danish subjects in the Islands ceded at the time of exchange of the ratifications of this treaty, shall continue to be respected.

Article 10.

Treaties, conventions and all other international agreements of any nature existing between Denmark and the United States shall *eo ipso* extend, in default of a provision to the contrary, also to the ceded islands.

Article 11.

In case of differences of opinion arising between the High Contracting Parties in regard to the interpretation or application of this convention, such differences, if they cannot be regulated through diplomatic negotiations, shall be submitted for arbitration to the permanent Court of Arbitration at The Hague.

Article 12.

The ratifications of this convention shall be exchanged at Washington as soon as possible after ratification by both of the High Contracting Parties according to their respective procedure.

In faith whereof the respective plenipotentiaries have signed and sealed this convention, in the English and Danish languages.

Done at New York this fourth day of August, one thousand nine hundred and sixteen.

[SEAL]

[SEAL]

ROBERT LANSING.
C. BRUN.

And whereas in giving advice and consent to the ratification of the said Convention, it was declared by the Senate of the United States in their resolution that "such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that such Convention shall not be taken and construed by the High Contracting Parties as imposing any trust upon the United States with respect to any funds belonging to the Danish National Church in the Danish West Indian Islands, or in which the said Church may have an interest, nor as imposing upon the United States any duty or responsibility with respect to the management of any property belonging to said Church, beyond protecting said Church in the possession and use of church property as stated in said Convention, in the same manner and to the same extent only as other churches shall be protected in the possession and use of their several properties;"

And whereas it was further provided in the said resolution "That the Senate advises and consents to the rati-

fication of the said Convention on condition that the attitude of the United States in this particular, as set forth in the above proviso, be made the subject of an exchange of notes between the Governments of the two High Contracting Parties, so as to make it plain that this condition is understood and accepted by the two Governments, the purpose hereof being to bring the said Convention clearly within the Constitutional powers of the United States with respect to church establishment and freedom of religion;"

And whereas this condition has been fulfilled by notes exchanged between the two High Contracting Parties on January 3, 1917;

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the City of Washington, on the seventeenth day of January, one thousand nine hundred and seventeen;

Now, therefore, be it known that I, Woodrow Wilson, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause therefore may be observed and fulfilled with good faith by the United States and the citizens thereof, subject to the said understanding of the Senate of the United States.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-fifth day of January in the year of our Lord one thou-
[SEAL] sand nine hundred and seventeen, and of the Independence of the United States of America the One hundred and forty-fist.

WOODROW WILSON.

By the President:

ROBERT LANSING,
Secretary of State.

DECLARATION.

In proceeding this day to the signature of the Convention respecting the cession of the Danish West-Indian Islands to the United States of America, the undersigned Secretary of State of the United States of America, duly authorized by his Government, has the honor to declare that the Government of the United States of America will not object to the Danish Government extending their political and economic interests to the whole of Greenland.

ROBERT LANSING.

New York, August 4, 1916.

[Exchange of Notes mentioned in Proclamation.]

[*The Secretary of State to the Danish Minister.*]

DEPARTMENT OF STATE,
WASHINGTON, January 3, 1917.

SIR:

I have the honor to inform you that the Senate of the United States by its resolution of ratification has advised and consented to the ratification of the convention between the United States and Denmark, ceding to the United States the Danish West Indian Islands, with the following provisos:

> "Provided, however, That it is declared by the Senate that in advising and consenting to the ratification of the said convention, such advice and consent are given with the understanding, to be expressed as a part of the instrument of ratification, that such Convention shall not be taken and construed by the High Contracting Parties as imposing any trust

upon the United States with respect to any funds belonging to the Danish National Church in the Danish West Indian Islands, or in which the said church may have an interest, nor as imposing upon the United States any duty or responsibility with respect to the management of any property belonging to said church, beyond protecting said church in the possession and use of church property as stated in said Convention, in the same manner and to the same extent only as other churches shall be protected in the possession and use of their several properties. And provided further, that the Senate advises and consents to the ratification of the said Convention on condition that the attitude of the United States in this particular, as set forth in the above proviso, be made the subject of an exchange of notes between the Government of the two High Contracting Parties, so as to make it plain that this condition is understood and accepted by the two Governments, the purpose hereof being to bring the said Convention clearly within the Constitutional powers of the United States with respect to church establishment and freedom of religion."

In view of this resolution of the Senate I have the honor to state that it is understood and accepted by the Government of the United States and the Government of Denmark that the provisions of this Convention referring to the property and funds belonging to the Danish National Church in the Danish West Indian Islands shall not be taken and construed by the High Contracting Parties as imposing any trust upon the United States with respect to any funds belonging to the Danish National Church in the Danish West Indian Islands, or in which the said church may have an interest nor as imposing upon the United States any duty or responsibility with respect to the management of any property belonging to said church, beyond protecting said church in the

possession and use of church property as stated in said Convention, in the same manner and to the same extent only as other churches shall be protected in the possession and use of their several properties.

I trust that your Government will in a formal reply to this communication accept this understanding as to the meaning and construction of the provisions of said Convention in accordance with the foregoing resolution of the Senate.

Accept, Sir, the renewed assurances of my highest consideration.

ROBERT LANSING

Mr. CONSTANTIN BRUN,
Minister of Denmark.

[*The Danish Minister to the Secretary of State.*]

THE DANISH LEGATION
WASHINGTON, D.C.

January 3rd, 1917.

SIR:

In reply to your communication of this day concerning the relation of the United States to the rights of the Established Church in the Danish West Indies and to the provisions referring to this point in the convention between the United States and Denmark ceding to the States the Danish Westindian Islands, I have the honor to state that it is understood and accepted by the government of Denmark and the Government of the United States that the provisions of this convention referring to the property and funds belonging to the Danish National Church in the Danish Westindian [sic] Islands shall not be taken and construed by the high contracting parties as imposing any trust upon the United States with respect to any fund belonging to the Danish National Church in the Danish Westindian [sic] Islands or in which the said

Church may have an interest nor as imposing upon the United States any duty or responsibility with respect to the management of any property belonging to said church beyond protecting said church in the possession and use of church property as stated in said convention in the same manner and to the same extent only as other churches shall be protected in the possession and use of their several properties.

It will be evident from the above that the Danish Government accept the understanding as to the meaning and construction of the provisions of the said convention in accordance with the resolution of the United States' Senate concerning the question of the rights of the Church in the Islands.

I have the honor, to be, Sir,
with the highest consideration,
Your most obedient and humble servant,

C. BRUN.

The Honorable
ROBERT LANSING,
Secretary of State of the United States.

DENMARK

[Inclosure 3—Exhibit B—Translation]

Nos. 30 and 68

MINISTRY OF FINANCE,
Copenhagen, January 13, 1913.

In a letter dated the 6th instant the company among other things requested to have transferred to it the rights, granted to the consortium for the exploitation through drainage and deepening of an area within the harbor of the Danish West India island of St. Thomas, in the letters from the Ministry of Finance to the consortium of the 2d and 11th (cf. letter of October 14, last year).

In this connection it may be stated that the Ministry of Finance, in view of the fact, that it appears from the secretly adopted by-laws of the company (a copy of which is returned herewith, bearing the mark "Set. Colonies Central Administration, January 17, 1913, A. C. Schlichtkrull") that the company has its domicile at Copenhagen and that a majority of the members of the board of directors must have the rights of Danish citizenship, so that the conditions laid down in the aforementioned letters of the Ministry for the desired transfer of rights are fulfilled hereby permits the company to dam up the areas in St. Thomas Harbor which are marked in red on the plan which accompanied the aforementioned concession granted to the consortium on July 7th of last year, for the exploitation through drainage and deepening of an area within the harbor of the Danish West India Island of St. Thomas which plan is appended, so that when these land areas are reclaimed the company will acquire free and unrestricted ownership thereof, although the company, in so far as such ownership may conflict with private rights, will have to settle with the interested parties. The company shall likewise have exclusive right

to utilize and exploit the basins constructed in conformity with the aforementioned plan. It may especially be remarked, that in consequence of the permit thus given, the company, will be entitled to charge wharfage stake-money, and other similar dues against vessels who come alongside the wharves or otherwise make use of the basins. The wharfage dues shall be charged in accordance with rates established in advance, which rates shall be alike to all.

The company shall likewise be permited to erect, on the land belonging to it, reservoirs for liquid fuel for ships, observing such reasonable safety measures against conflagration as the proper authority may deem necessary.

Pilotage and harbor dues (including ship dues) shall be paid to the harbor treasury by the ships which come to or utilize the harbor, wharf, mole and dock establishments which may be constructed by the company, to the same extent and according to the same rate as those prevailing at all times in the remainder of St. Thomas Harbor.

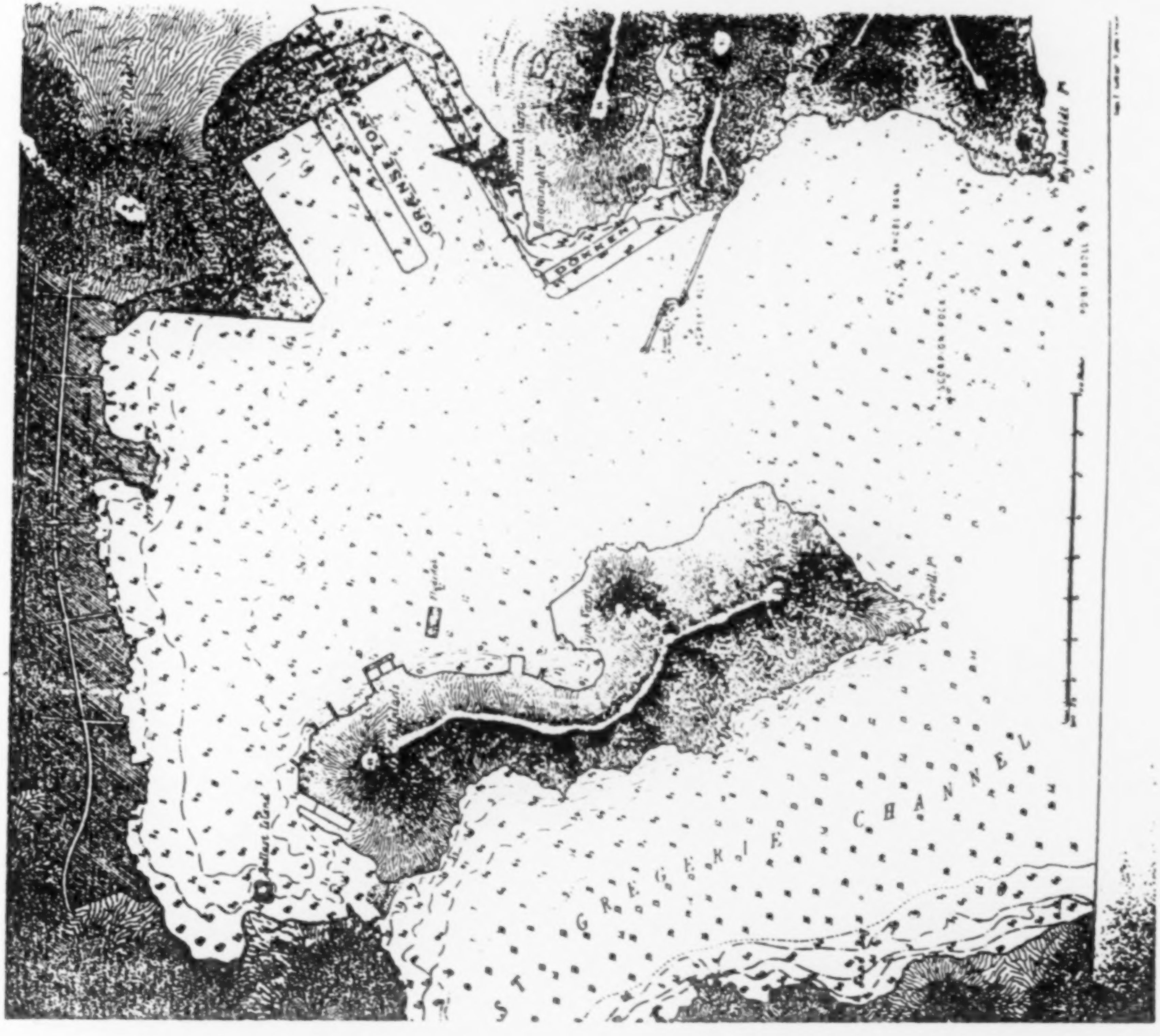
The police supervision over the aforementioned sea and land areas will evolve upon the local harbor police and the general police.

With respect to the application, made in the aforementioned letter of the company for duty free importation of all materials imported for the original installation in and about St. Thomas Harbor of the aforementioned establishments it may be remarked that, in the letter of the 8th instant, the Government for the West Indies Islands was authorized to lay before the colonial council for St. Thomas and St. Jan a proposal for the exemption from customs duties and ship dues of materials imported for establishments in and about St. Thomas Harbor, this proposal reading to the effect that the Government is authorized, for a period of ten years calculated from

January 1, 1913, to grant exemption from customs duties and ship dues on all materials, including working implements and machinery which are imported to St. Thomas as an original installation there of establishments designed to provision or serve ships coming into the harbor, or which are otherwise calculated [to] further the navigation in the harbor.

N. NEERGAARD
C. DINDS BANSEN

To The West India Company.


CHANNEL

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, dated as of the 3rd day of October, 1973 among THE UNITED STATES DEPARTMENT OF THE INTERIOR (hereinafter called "Interior"), the Government of the Virgin Islands (hereinafter called the "V.I. Government"), THE WEST INDIAN COMPANY, LIMITED (hereinafter called "WICO"), MAJOR JOSEPH BYERS II, MAJOR BYERS INVESTMENT ASSOCIATES, (hereinafter collectively called "Byers Group"), CARIBBEAN HARBOR CLUB, INC., and JORGE SOUSS and JOSE BLANCO LUGO.

WHEREAS, in 1913 the Government of Denmark gave to The West Indian Company certain rights to reclaim and fill in St. Thomas Harbor, pursuant to which The West Indian Company constructed a large dock and harbor basin, leaving a substantial portion of its rights then unexercised; and

WHEREAS, the Convention between the United States and Denmark, covering acquisition of the Danish Virgin Islands; proclaimed on January 17, 1917, provides in Article 3:

> "It is especially agreed, however, that:
>
> * * *
>
> (4) The United States will maintain the following grants, concessions and licenses, given by the Danish Government, in accordance with the terms on which they are given:
>
> a. The concession granted to 'Det vestindiske Kompagni' (The West Indian Company) Ltd. by the communications from the Ministry of Finance of January 18th 1913 and of April 16th 1913 relative to a license to embank, drain, deepen and utilize certain areas in St. Thomas Harbor, and preferential rights as to commercial, industrial or shipping establishments in the said Harbor."

WHEREAS, in 1935, pursuant to informal understandings between WICO, the Virgin Islands Government and the U.S. Army Corps of Engineers, fill was placed within the concession area which extended the land area of Lots Nos. 4 and 5, Estate Thomas, Kings Quarters, Virgin Islands, then owned by WICO; and

WHEREAS, by deed dated August 18, 1956, WICO conveyed to Major Byers' Investment Associates Lot No. 4, Estate Thomas, Kings Quarters, St. Thomas, and all right, title and interest therein; and

WHEREAS, by deed dated September 11, 1956, WICO conveyed to Joseph Byers II Lot No. 5, Estate Thomas, Kings Quarters, St. Thomas, and all right, title and interest therein; and

WHEREAS, by deed dated February 15, 1961, Joseph Byers II and Ethel F. Byers conveyed to the Virgin Islands Government Lot No. 5A, Estate Thomas, Kings Quarters, St. Thomas, being a portion of Lot No. 5; and

WHEREAS, in 1963 in the course of a harbor reclaiming project, the Virgin Islands Government placed fill within the concession area seaward of Lots Nos. 4 and 5, which filling was accomplished with the consent of Major Byers and without discussion with WICO; and

WHEREAS, in or about October, 1964, Major Byers' Investment Associates conveyed said Lot No. 4 and all right, title and interest therein to CARIBBEAN HARBOR CLUB, INC., then known as Island Hotels, Ltd.; and

WHEREAS, by deed dated April 9, 1965, Joseph Byers II conveyed to Major Byers' Investment Associates the remaining portion of Lot No. 5; and

WHEREAS, by deed dated April 9, 1965 Joseph Byers II conveyed to Major Byers' Investment Associates all of his right, title and interest in said Lot No. 5; and

WHEREAS, by contract dated September 27, 1966, Major Byers Investment Associates agreed to convey said Lot No. 5 as enlarged by the 1963 fill to Ford Wright, Jr., Adrian Perez-Agudo Albert B. Poe and by deed of October 19, 1936 conveyed all right, title and interest in the said Lot No. 5 to the said parties; and

WHEREAS, Ford Wright, Jr., Adrian Perez-Agudo and Albert B. Poe subsequently sold to Jorge Souss and Jose Blanco Lugo a one-fourth share and undivided interest in said Lot No. 5 as so enlarged; and

Whereas, Ford Wright, Jr., Adrian Perez-Agudo and Albert B. Poe thereafter assigned their remaining interests in Parcel No. 5 as so enlarged to EHG Enterprises, Inc.; and EHG subsequently assigned its interest to CARIBBEAN HARBOR CLUB, INC. (then known as Island Hotels, Ltd.); and

WHEREAS, CARIBBEAN HARBOR CLUB, INC. represents that it has succeeded to such right, title and interest as Ford Wright, Jr., Adrian Perez-Agudo and Albert B. Poe may have had with respect to said Lots Nos. 4 and 5 as so enlarged; and

WHEREAS, the United States commenced an action to a quiet title against WICO and others, United States of America v. The West Indian Company et al., Civil No. 337—1968, District Court of the Virgin Islands, Division of St. Thomas and St. John, in which the United States seeks a determination that the United States is the owner of the 1935 and 1963 filled lands and that the reclaiming rights granted to WICO by the Danish Government have terminated; and

WHEREAS, the Government of Denmark, by Note dated June 17, 1970, requested the Government of the United States to respect the above-quoted provision of the Treaty of Cession; and

WHEREAS, settlement negotiations commenced, and at the suggestion of the United States Interior Depart-

ment such settlement negotiations were pursued by WICO, the Buyers Group and CARIBBEAN Harbor CLUB, INC., with the Virgin Island Government; and

WHEREAS, WICO submitted a settlement proposal to the Governor of the Virgin Islands; and

WHEREAS, the Governor of the Virgin Islands after consideration ordered a public hearing to be held; and

WHEREAS, on October 26, 1971 a public hearing was held in St. Thomas, Virgin Islands at which the "Statement of West Indian Company re: Proposal for Reclaiming Part of Long Bay under its Danish Concession" (hereinafter the "Proposal") was the subject of public hearing and consideration; and

WHEREAS, thereafter the Governor of the Virgin Islands referred the Proposal to the Legislature of the Virgin Islands; and

WHEREAS, in consequence of a request to the Court made by WICO at the pre-trial conference in the above-captioned quiet title action, the District Court recommended to the Governor and Legislature of the Virgin Islands favorable consideration of the proposal; and

WHEREAS, on October 11, 1972 the Virgin Islands Legislature enacted Act. No. 3326, Ninth Legislature of the Virgin Islands of the United States, Fourth Session, 1972, which was approved by the Governor of the Virgin Islands on October 30, 1972, and which provides in full as follows:

> "WHEREAS the United States has instituted an action in the District Court of the Virgin Islands, captioned "United States of America vs The West Indian Company, et al, Civil No. 337—1968 To Quiet Title; and
>
> WHEREAS there has been an offer of settlement and compromise put forward by the West Indian Company; and

WHEREAS the offer of settlement and compromise has been the subject of extensive study, investigation and consideration by the Government of the Virgin Islands, acting through the Legislature and the Governor; and

WHEREAS it appears that the offer of settlement and compromise is in the public interest; and

WHEREAS the District Court Judge has recommended consideration of the settlement offer by the Governor and Legislature of the Virgin Islands; Now, Therefore,

BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. The Governor of the Virgin Islands in behalf of the Government of the Virgin Islands shall recommend to the United States Department of Interior and the United States Department of Justice the acceptance and implementation of an offer of settlement and compromise substantially in the form presented by The West Indian Company in *Statement of The West Indian Company re Proposal for Reclaiming Part of Long Bay Under Its Danish Concession*, dated October 26, 1971, as modified by letter from The West Indian Company to Governor Melvin H. Evans, dated November 2, 1971; provided that the West Indian Company will deed to the Government of the Virgin Islands a waterfront highway in front of its proposed development at Frederiksburg Point, in the event such development is undertaken and completed; and provided further that the West Indian Company shall stipulate the period of time within which such Frederiksburg Point development will be undertaken.

Thus passed by the Legislature of the Virgin Islands on October 11, 1972."

WHEREAS, the Justice Department took the view that the settlement Proposal encompassed important matters

outside the scope of said lawsuit and, therefore, any disposition should be made under the Territorial Submerged Lands Act (48 U.S.C. § 1701 et seq.); and

WHEREAS, the parties have now reached agreement on the terms hereinafter set forth, which terms are in substance within the framework of the WICO settlement proposal.

WHEREAS, in the circumstances, the conveyances to be made hereunder appear to satisfy a compelling public need in the following respects; among others:

(1) an additional two and one-half acres to the public recreation area near Pearson Garden, almost doubling the size thereof, will be provided by WICO;

(2) filled land for waterfront highway widening from two to four lanes will be provided by WICO;

(3) dredging the harbor in Long Bay will be provided by WICO, thereby benefiting navigation and promoting tourism;

(4) the proposed reclamation will enlarge the area of level land for development near the downtown area of Charlotte Amalie, which is presently limited owing to the hilly terrain;

(5) the development contemplated of the areas to be reclaimed for marinas, cruise ship berth, and development of offices, apartments, shops and related facilities, will tend to provide additional employment for residents of St. Thomas and enhance facilities for tourism;

(6) the termination of any rights remaining to WICO under its Danish grant will eliminate a possible cloud over the future of St. Thomas Harbor, enabling St. Thomas Harbor to be developed on a limited, planned basis, subject to specific time limits;

(7) possible clouds on the title of the V.I. Government waterfront recreation area and on the title of waterfront properties of the Byers Group will be eliminated.

NOW, THEREFORE, the parties agree as follows:

1. *ADDITIONAL RECREATION AREA*

(a) *General.* WICO shall fill the red area (Area I) on the attached map headed "Plan of Part of St. Thomas Harbor" dated October 8, 1971 (hereinafter called the "Map") and quitclaim to the V.I. Government such rights as it may have therein, and the V.I. Government shall make application to the Secretary of the Interior for conveyance to the V.I. Government, pursuant to the Territorial Submerged Lands Act, of such rights as the United States may have in said Area I.

(b) *Description.* The easterly boundary of Area I shall be an extension on the same course, namely S40°-00′W, as the easterly boundary of Lot 5A, Estate Thomas, Kings Quarter, St. Thomas, V.I., as shown in P.W. File No. G9-575-T60. The westerly boundary of Area I shall be an extension on the same course, namely, N80°-00′E as the Westerly boundary of Lot 5A. WICO's obligation shall be to provide an additional area of two and one-half (2½) acres for the V.I. Government, seaward of the existing shoreline and between the easterly and westerly boundaries above described, in general keeping with the plan of reclamation shown on the Map. Should the area of Area I, as determined by survey pursuant to Section 6(d) be less than two and one-half (2½) acres, WICO may supply the deficiency by further fill seaward on lines in general keeping with the contours of the existing shoreline. Alternatively, WICO may supply the deficiency by an adjustment of the easterly or westerly boundaries of Area I. If the existing shoreline shall change materially by reason of natural accretion or reliction prior to the date of completion of

fill, WICO's obligation shall continue to be the provision of two and one-half (2½) additional acres, and appropriate adjustments shall be made to the seaward boundary to achieve this result.

(c) *Character of Fill.* The fill to be provided for the reclaiming of Area I shall consist substantially of dredge fill from St. Thomas Harbor. WICO's obligation shall be satisfied by providing fill land of similar kind and character to that presently in place in Area II. Without limiting the foregoing, it is specifically agreed that WICO shall not be obligated, unless required by Federal law, to provide bulkheads, retaining walls, rock fill or other structural improvements.

(d) *Time Limits.* WICO shall commence filling Area I not later than nine (9) months from the Closing Date, and shall complete the filling within one and one-half (1½) months from commencement. However, such completion time shall be extended by the period of any delay caused by the United States or the V.I. Government or of any cause of delay reasonably beyond the control of WICO or its contractors, including within such causes without limitation, Government priorities, intervention by or delays caused by civil, naval, or military authorities, acts of God (other than ordinary storms or inclement wheather [sic] conditions), earthquakes, explosions, ligntning, flood, fire, strikes, or other industrial disturbances, riots, insurrections, war, sabotage, vandalism, blockades, enbargoes [sic] or epidemics. WICO shall give written notice to the V.I. Government within seven (7) days after commencement of any such excusable delay and similar notice of the date when such delay ended. In addition to such occasions for delay, WICO's obligation to commence filling within nine (9) months is subject to the availability on reasonable commercial terms of a dredge adequate to perform the fill required within the restrictions on dredging elsewhere provided in this Agreement as well as the provisions of applicable law.

2. WIDENING OF FREDERICKSBERG POINT HIGHWAY

(a) *General.* WICO shall provide for the V.I. Government a fill area within Area V on the map sufficient for the widening of the Fredericksberg Point Highway from two lanes to four lanes.

(b) *Description.* WICO's obligation shall be to fill and provide for the V.I. Government an area up to thirty-six (36) feet wide parallel to the present shoreline of Fredericksberg point, adjacent to the present highway, within the limits of Area V on the Map. The actual width shall be determined by what is required for the widening of the highway from two to four lanes. The parties recognize that engineering, cost or similar considerations may make it advisable to exceed the thirty-six (36) foot width in some places and to decrease the thirty-six (36) foot width in others, an overall result being intended to provide an area not exceeding thirty-six (36) feet in average width, the overall result being to provide an area for widening to a four-lane highway.

(c) *Character of Fill.* The provisions of Section 1(c) shall apply, subject to the following additional provisions:

(i) The fill shall be placed to a height approximately the same as the existing highway.

(ii) If WICO should perform the fill for highway widening before proceeding with the reclaiming of the balance of Area V, WICO shall, on [sic] order to protect the road area, place additional dredge fill to a width of twenty (20) feet. Such additional fill would extend from the height of the existing highway to its natural angle of repose. The placing of such fill shall not be deemed to be a commencement of performance by WICO for purpose of Section 6(g). Such additional dredge will shall remain the property of WICO.

(iii) WICO's obligation is limited to providing a fill area for the widening of the highway and WICO assumes no obligation regarding construction of the highway or the cost thereof.

(d) *Time Limits.* The provisions of Section 1(d) shall apply, except that reference to Area I therein shall refer for this purpose to the area for highway widening.

(e) *Obligation of V.I. Government.* This Section does not require the V.I. Government to construct a roadway on the area herein to be provided for widening. However, if the V.I. Government shall not use the area or any portion thereof for highway purposes, it shall grant to WICO a right of way over the area or over any unused portion to and from Area V on the Map during and after reclamation thereof by WICO. In any case WICO shall be entitled to reasonable access from the public highway to and from Area V.

3. CONFIRMATION OF TITLE TO V.I. GOVERNMENT FILLED LAND

WICO shall quitclaim to the V.I. Government all rights it may have in the yellow area (Area II) and to Area II-A on the Map, and the V.I. Government shall make application to the Secretary of the Interior for conveyance to the V.I. Government, pursuant to the Territorial Submerged Lands Act, of such rights as the United States may have in said Area II and II-A, and in Lot 5A, Estate Thomas, Kings Quarter, St. Thomas, V.I. as shown in P.W. File No. G-9-575-T60.

4. TERMINATION OF WICO'S UNEXERCISED CONCESSION RIGHTS

WICO shall quitclaim to the V.I. Government such remaining unexercised rights to reclaim and fill as WICO may have under grant from the Government of Denmark by letters dated January 18 and April 16, 1913. The

United States may enter judgment in the lawsuit captioned United States v. West Indian Company, Ltd., et al., Civil No. 337-1968, now pending in the District Court of the Virgin Islands, against all other parties, without costs as to any party. The order entering judgment shall have to WICO all reclaimed areas heretofore reclaimed by WICO itself and all rights to the harbor basin heretofore constructed by WICO.

5. PAYMENT TO THE UNITED STATES

The United States shall receive a payment of Forty-Five Thousand Dollars ($45,000).

6. CONVEYANCES

(a) *General.* If the requirements of the Territorial Submerged Lands Act are met, the Secretary of the Interior shall convey to the Government of the Virgin Islands, and the Government of the Virgin Islands shall convey the Filled Lands and Submerged Lands hereinafter described (and the right to reclaim the same) in Long Bay, St. Thomas Harbor, in part to WICO and in part to the Byers Group. The lands to be conveyed are:

A. *Filled Lands.* Lot 5, Estate Thomas, Kings Quarter, as extended by fill in 1963 seaward of Lot 5 and Lot 4, and shown on the Map as Area III.

B. *Submerged Lands.* The areas shown in light blue and dark blue on the attached Map, designated Areas IV, V, VI and VII.

The filled Lands and Submerged Lands are more precisely described below.

All of the Submerged Lands shown in dark blue (Area IV) and light blue on the Map (Areas V, VI and VII) shall be conveyed to WICO. The Filled Lands, Area III on the Map, and the dark blue area on the Map (Area IV), will be divided among WICO, the CARIBBEAN

HARBOR CLUB, INC., and Jorge Souss and Jose Blanco Lugo by separate Agreement between them.

(b) *Description of Filled Lands.* The Filled Lands consist of (a) Lot No. 5, Estate Thomas, Kings Quarter, as described in P.W. Drawing No. G-9-432T56 annexed to deed dated September 11, 1956 from WICO to Joseph Byers II, less the portion thereof conveyed as Lot No. 5A Estate Thomas, Kings Quarter, by deed dated February 15, 1961 from Joseph Byers II and Ethel F. Byers to the Government of the Virgin Islands, as described in P.W. File No. G9-57 5-T60 (said Lot No. 5, as so reduced, being elsewhere referred to in this agreement as "Lot No. 5"); plus (b) the fill area seaward of Lot No. 5 and Lot 4, Estate Thomas, Kings Quarter, placed by the V.I. Government during dredging operations in 1963.

(c) *Deed to Filled Lands; Escrow.* The Grantee to be named in the deed to the Filled Lands shall be as provided in Paragraph "10(d)(ii)". At the closing the deed shall be delivered in escrow to First National City Bank, St. Thomas, U.S. Virgin Islands.
to be delivered on joint written instructions from CARIBBEAN HARBOR CLUB, INC. and Jorge Souss and Jose Blanco Lugo, the Byers Group and WICO. [sic]

(d) *Description of Submerged Lands; Survey.* The submerged Lands are shown in Areas IV, V, VI and VII on the Map. A survey shall be made within 90 days from the execution hereof which shall determine the precise description of such Areas as well as Areas I, II, II-A and III. WICO will undertake to provide such a survey, which shall be subject to the approval of the V.I. Government and the Department of the Interior which approval shall, however, not unreasonably be withheld. Failure to take specific written exceptions to such survey within thirty (30) days following receipt thereof shall conclusively establish acceptance thereof.

(e) *Character of Rights.* The right on WICO's part to reclaim Areas IV, V, and VII is a right on WICO's part to perform the reclaiming and does not impose an obligation on WICO's part to be performed.

(f) *Character of Fill.* The fill of Areas IV, V, VI and VII shall consist substantially of dredge fill from St. Thomas Harbor. WICO shall be entitled to provide such bulkheading, retaining wall, rock fill and similar structures as it may deem appropriate. Prior to construction of any structures on any on any [sic] reclaimed areas, the owner of such area shall provide necessary connections to the public sewerage system so that wastes will not be discharged into the Harbor.

(g) *Time Limits.* As to Areas IV and V on the Map, WICO shall commence reclaiming not later than five (5) years following the Closing Date. As to Areas VI and VII on the Map, WICO shall commence filling not later than ten (10) years following the Closing Date. These time limits are to be extended by the duration of any major decline in tourism in St. Thomas, which shall mean any six-month period during which the number of visitors to St. Thomas shall be thirty percent (30%) less than during the comparable period of 1972; the period of extension for this reason shall in no event exceed five (5) years.

Once work is commenced as to a particular Area, WICO shall proceed with reasonable diligence to completion of that Area. If WICO fails, without reasonable cause, to proceed, the V.I. Government shall have the right, after ninety (90) days written notice (which shall include a demand to proceed), to terminate the reclaiming rights as to the uncompleted portion of such Area. With respect to Area IV, such notice shall also be sent to CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Lugo Blanco, who, upon WICO's failure to proceed shall have the right to complete Area IV at WICO's expense. Reasonable cause shall be such causes as a major decline in

tourism (as above defined) and causes of the sort described in Section 1(d). For purposes of this subparagraph, work shall not be deemed to have commenced as to a particular Area because of the mere placing of incidental fill resulting from the performance of work in some other Area.

7. DREDGING

The dredge area shall be the area from Anchorage Area B on U.S. Coast Guard and Geodetic Survey Chart No. 933 to and along the WICO dock and in Anchorage Area A, on Chart No. 933 to such limits as necessary for accomplishment of the fill.

Dredging is to be performed by the hydraulic suction type system and not by open mechanical means in order to avoid undue effects on water quality. Dredging will be montiored by the V.I. Health Department at the expense of WICO in order to ensure observance of this requirement as well as for compliance with any certifications under the Federal Water Pollution Control Amendments of 1972.

8. WATERFRONT HIGHWAY

(a) *General.* With one (1) year following completion of reclaiming of Area V, WICO will construct and dedicate to the V.I. Government a waterfront highway within Area V. Said time limit shall be subject to the causes of delay set out in Section 1(d).

(b) *Character of Construction.* The waterfront highway shall be two lanes, approximately thirty (30) feet wide, black top or equivalent construction comparable to secondary roads in St. Thomas.

(c) *Location.* The waterfront highway shall roughly parallel the waterfront perimeter of Area V. The seaward boundary of the highway may in WICO's discretion be set back from the shore not more than eighty (80)

feet along the east and west boundaries of Area V, and not more than one hundred (100) feet on the south boundary. The purpose of such permissible set backs is to allow access and service space for marinas on the east and west sides and to allow apron and other space for servicing a cruise ship berth to be located on the south boundary.

(d) *Preservation of View.* In order to preserve a view of the harbor from the waterfront highway, structures to be erected in the area between the highway and the shore shall not exceed in the aggregate twenty percent (20%) of the linear footage of the entire shorefront perimeter of Area V.

(e) *Right of Way.* The V. I. Government shall grant to WICO a right of way to extend, and WICO shall extend, the waterfront highway through and over Area II-A on the Map, so as to connect with the existing Fredericksberg Point Road (as the same may be enlarged to four lanes).

(f) *Acceptance of Dedication.* Upon completion of the waterfront highway as extended, the V.I. Government shall accept a dedication thereof and shall maintain the same as a public highway. Should the V.I. Government refuse to accept such dedication, or should the V.I. Government, following acceptance of dedication, devote such highway to purposes other than highway purposes, all right, title and interest in said highway shall revert to WICO.

9. ENDORSEMENT OF V.I. GOVERNOR

This Agreement shall constitute:

(a) a request, pursuant to the Territorial Submerged Lands Act, by the Governor of the Virgin Islands to the Secretary of the Interior to convey submerged lands and filled lands in accordance with the terms of this Agreement; and

(b) an application, pursuant to the Territorial Submerged Lands Act, for a United States Department of the Interior Submerged Lands Permit or other authorizations, authorizing the dredging, filling, and other work contemplated by this Agreement, with the endorsement of the Governor of the Virgin Islands in favor thereof to the Secretary of the Interior; and

(c) an endorsement of the Governor of the Virgin Islands in favor of an application, pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403) and Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1344) and other related acts, for a United States Army Corps of Engineers permit or other authorizations, authorizing the dredging, filling, and other work contemplated by this Agreement.

Notwithstanding the foregoing, WICO shall not be relieved of the requirement, if applicable, of obtaining a certification under Section 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1341).

10. CLOSING

The Closing shall take place on twenty (20) days prior written notice by WICO to the other parties. Such date is referred to in this Agreement as the Closing Date. The closing shall take place at the offices of the Attorney General of the Virgin Islands, St. Thomas, V.I. At or prior to the closing, the following shall be delivered: (a) WICO, the Byers Group, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo shall deliver to the V.I. Government:

(i) a cashiers or certified check in the amount of Forty-Five Thousand Dollars ($45,000).

(ii) A conveyance or release from WICO in form satisfactory to the Solicitor or Assistant Solicitor

of Interior quitclaiming to the United States the rights described in Section 4.

(iii) Stipulations from each of the parties (other than the United States) to United States v. West Indian Company, Ltd., et al., Civil No. 337-1968, District Court of the Virgin Islands, in form satisfactory to the Solicitor or Assistant Solicitor of Interior consenting to the entry of judgment in favor of the United States and against all other parties, without costs as to any party, including the reservation of rights described in Section 4.

(iv) An opinion of counsel for WICO that WICO is a corporation duly organized and existing under the laws of the Virgin Islands, and this Agreement and all instruments to be delivered hereunder by WICO have been duly authorized, executed and delivered by WICO and are legal, valid and binding obligations of WICO enforceable in accordance with their terms.

(v) An opinion of counsel for the Byers Group that Major Byers Investment Associates is a corporation duly organized and existing under the laws of the Virgin Islands; that this Agreement and all instruments to be delivered hereunder the Byers Group have been duly authorized and delivered by, and are legal, valid and binding obligations of, the person or corporation comprising the Byers Group executing the same.

(vi) An opinion of counsel for the CARIBBEAN HARBOR CLUB, INC. that it is a corporation duly organized and existing under the laws of the U.S. Virgin Islands and has duly qualified to engage in business in the Virgin Islands; that CARIBBEAN HARBOR CLUB, INC. has succeeded to all right, title and interest to Lot No. 5, as defined in Section 6(b), except as to the one-fourth share owned by

Jorge Souss and Jose Blanco Lugo; that this Agreement and all instruments to be delivered hereunder by CARIBBEAN HARBOR CLUB, INC. have been duly authorized, executed and delivered by, and are legal, valid and binding obligations of CARIBBEAN HARBOR CLUB, INC.

(b) WICO, the Byers Group and CARIBBEAN HARBOR CLUB, INC. shall deliver to the V.I. Government:

(i) quitclaim deed from WICO to the V.I. Government in form satisfactory to the V.I. Attorney General, quitclaiming such rights as it may have in Areas II and II-A.

(ii) Opinions of counsel described in Subsections (a)(iv), (v) and (vi) of this Section.

(c) If all applicable requirements of the Territorial Submerged Lands Act have been met and complied with, including approvals by U.S. Congressional Committees, Interior shall deliver to the V.I. Government:

(i) A conveyance from the Secretary of the Interior, pursuant to the Territorial Submerged Lands Act, conveying to the V.I. Government all right, title and interest of the United States in and to areas I, II and II-A, and Lot No. 5A, Estate Thomas, Kings Quarter, St. Thomas, V.I. as shown on P.W. File No. G-9-575-T60.

(ii) A conveyance from the Secretary of Interior, pursuant to the Territorial Submerged Lands Act, conveying to the V.I. Government all right, title and interest of the United States in and to the filled land as described in Section 6(b) and Areas IV, V, VI and VII, for reconveyance in accordance with the terms of this Agreement.

(d) The V.I. Government shall deliver to WICO, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo:

(i) A conveyance from the V.I. Government, pursuant to the Territorial Submerged Lands Act, in form satisfactory to counsel for WICO, conveying subject to the appropriate conditions of this Agreement, to WICO of all right, title and interest of the V.I. Government in Areas IV, V, VI and VII.

(ii) Conveyances pursuant to the Territorial Submerged Lands Act, in form satisfactory to counsel for WICO, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo, from the V.I. Government conveying all right, title and interest of the V.I. Government in the Filled Lands as described in Section 6(b), as follows:

(a) As to that portion of the Filled Lands shown in Public Works Drawing No. F9-1884-T66, an undivided three-fourths (¾) interest to CARIBBEAN HARBOR CLUB, INC., and the remaining undivided one-fourth (¼) interest to Jorge Souss and Jose Blanco Lugo, or to such other grantee or grantees as shall be stated in a joint written notice to the V.I. Government signed by said parties and WICO.

(b) To CARIBBEAN HARBOR CLUB, INC., the remaining portion of the Filled Lands, or to such other grantee or grantees as shall be stated in a joint written notice to the V.I. Government signed by CARIBBEAN HARBOR CLUB, INC. and WICO.

(iii) An opinion of the Attorney General of the Virgin Islands to effect that this Agreement and the conveyances hereunder have been duly authorized, executed and delivered and are legal, valid and binding obligations enforceable in accordance with their terms.

11. GENERAL CONDITIONS

(a) The obligation of WICO to close this Agreement shall be subject to the following conditions:

(i) *Army Corps of Engineers Permit.* The Army Corps of Engineers shall have granted, pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403) and Section 404 of the Federal Water Pollution Control Act (33 U.S.C. § 1344) and other related acts, permit or other authorizations authorizing the dredging, filling, and other work contemplated by this Agreement, which permit or authorizations shall be in form and substance satisfactory to counsel for WICO.

(ii) *Compliance with Territorial Submerged Lands Act.* All appropriate action required to have been taken under the Territorial Submerged Lands Act (48 U.S.C. § 1701-1704) to authorize the conveyances contemplated by this Agreement and otherwise to carry out this Agreement shall have been taken by the Department of Interior and by the V.I. Government, including the proper submission by the Secretary of Interior to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate.

(iii) *Compliance With Other Laws.* All appropriate action required to have been taken udner the National Environmental Protection Act of 1969 (42 U.S.C. § 4321-4347), the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. § 1251, et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. § 661-666c) and any other applicable laws, both under Federal and Virgin Island Law, have been taken.

(iv) *Zoning.* The Zoning Maps of St. Thomas shall have been extended and amended so that the following Areas shall be zoned as follows:

Areas:	*Zone:*
III	Zone W-1 or R-3
IV	Zone W-1 or R-3
V	Zone W-1
VI	Zone W-2

(b) It is understood that neither the Department of the Interior nor the Virgin Islands Government can bind themselves to fulfill the foregoing conditions. However, all parties express their intentions to use their best efforts to meet the conditions within the limits of applicable law.

12. PRESERVATION OF MODIFIED SHORELINES

This Agreement adjusts the differences among the parties as to reclamation rights in Long Bay, St. Thomas. Consequently, it is agreed that neither the United States nor the V.I. Government will reclaim except for public purposes pursuant to the powers of eminent domain, or permit others to reclaim, submerged lands seaward of the areas for reclamation shown on the Map.

13. REPRESENTATIVE OF BYERS GROUP

The Byers Group designates James Bough, Esq., P.O. Box 879, St. Thomas, V.I., as its attorney-in-fact with repect to all matters relating to this Agreement, performance or modification thereof. No member of the Byers Group may terminate the authority of such attorney-in-fact without giving written notice, by registered mail, to each of the other parties to this Agreement. Such notice shall designate a successor attorney-in-fact. Such designation of an attorney-in-fact or successor shall survive the death or incapacity of any individual member of the Byers Group.

14. REPRESENTATIVE OF V.I. GOVERNMENT

The Representative of the V.I. Government authorized to represent the V.I. Government with respect to all matters relating to this Agreement, performance of modifica-

tion thereof, shall be the Attorney General of the Virgin Islands, or such other government official as the V.I. Governor may from time to time designate as successor representative by written notice by registered mail to the other parties hereof.

15. ASSIGNABILITY

(a) WICO's rights to dredge and reclaim are not to be assignable. However, WICO is to be entitled to proceed through a limited partnership, syndicate or other legal form of joint venture customary in real estate development so long as WICO remains responsible for fulfillment of its obligations hereunder and retains a substantial interest in such a joint venture.

(b) Once reclaimed, the areas filled shall belong to WICO in fee simple (except as otherwise provided as to Area IV), subject to applicable zoning requirements, and provided that WICO is then in compliance with Sections 2 and 8 of this Agreement requiring WICO to fill and provide land for the V.I. Government.

Except as otherwise specifically provided herein, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

16. NOTICES and COMMUNICATIONS

To Interior

United States Department of the Interior

Washington, D.C. 20240
Attn: Director, Office of Territorial Affairs
CC: Assistant Solicitor—Territories

To the V.I. Government

Attorney General of the Virgin Islands
Department of Law
P.O. Box 280
St. Thomas, Virgin Islands of U.S. 00801

To WICO

The West Indian Company Limited
P.O. Box 660
St. Thomas, Virgin Islands of U.S.A. 00801
Attn: President

CC: Thomas D. Ireland, Esq.
P.O. Box 100
St. Thomas, Virgin Islands, 00801, and

Haight, Gardner, Poor & Havens
One State Street Plaza
New York, New York 10004
Atten: S. C. Miller, Esq.

To Byers Group

James A. Bough, Esq.
as Representative for Byers Group
P.O. Box 879
St. Thomas, Virgin Islands of U.S.A. 00801

To CARIBBEAN HARBOR CLUB, INC.

P.O. Box 13171
Santurce, Puerto Rico 00908
Attn: Chairman of the Board

CC: Mr. Hector Ceinos
P.O. Box 9065
Santurce, Puerto Rico 00908

William C. Loud, Esq.
P.O. Box 1686
St. Thomas, Virgin Islands 00801

TO: Jorge Souss
P.O. Box 4551
San Juan, Puerto Rico 00905

TO: Jose Blanco Lugo
C/O Jorge Souss
P.O. Box 4551
San Juan, Puerto Rico 00905

17. ACCEPTANCE

Upon receipt of a written notice from WICO that the work contemplated with respect to an Area, or highway widening pursuant to Section 2, or construction of waterfront highway pursuant to Section 8, has been completed and is ready for final inspection and acceptance, the Representative of the V.I. Government (or in case of Area IV, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo, shall promptly cause such inspection to be made and

(a) shall promptly issue a final acceptance certificate under his signature, stating that such work is acceptable and fully performed and accepted pursuant to the terms and conditions of this Agreement and such certificate shall be deemed to be a full performance and discharge of the obligations of WICO thereunder, without any agreement, representation or warranty, expressed or implied, by WICO as to its physical condition, or fitness for any use whatsover or against any defects whether patent or latent.

(b) in lieu of such certificate, shall promptly deliver to WICO in writing under his signature a statement stating a just and true reason for not issuing such certificate and stating the defects, if any, to be remedied, to entitle WICO to such certificate. Failure to deliver such a statement within ten (10) days of receipt of notice shall constitute acceptance within the terms of subparagraph (a).

18. MISCELLANEOUS

(a) *Eminent Domain.* Nothing in this Agreement shall affect the rights of the United States or the V.I. Government to acquire by eminent domain or condemnation any of the lands or rights therein which are the subject of this Agreement.

(b) *Extensions of Time and Other Matters Relating to Performance.*

Following the Closing, any matters relating to performance or modification of this Agreement may be adjusted or disposed of by agreement between the V.I. Government and WICO, provided that no material enlargement of the seaward bounds of the fill areas may be accomplished without compliance with the Territorial Submerged Lands Act.

(c) *Rights of Others.* As to Area VII, it is understood that WICO's rights to reclaim are subject to WICO's obtaining appropriate consents from the riparian owners (other than WICO itself).

(d) *WICO Authorized to Make Permit Applications.*

To the extent that it may be necessary or advisable for the Byers Group or CARIBBEAN HARBOR CLUB, INC., or Jorge Souss, or Jose Blanco Lugo to join in any of the following applications, the Byers Group, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo authorize WICO or its attorneys on behalf of the Byers Group, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo, respectively, to join in such applications and to take such steps as may be advisable to accomplish the same:

(i) an application (including amendments, renewals, and extensions thereof), pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403) and Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1344) and other related acts, for a United States Army Corps of Engineers permit or other authorizations, authorizing the dredging, filling, and other work contemplated by this Agreement.

(ii) an application (including amendments, renewals, and extensions thereof), pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of

1972 (33 U.S.C. § 1341), for certification, authorizing the dredging, filling and other work contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

United States Department of Interior

By:
Director, Office of Territorial Affairs

Government of the Virgin Islands

By: /s/ Melvin H. Evans
MELVIN H. EVANS
Governor

The West Indian Company, Limited

By: /s/ [Illegible]
President

Attest:

/s/ [Illegible]
Secretary

/s/ Major Joseph Byers II
MAJOR JOSEPH BYERS II

Major Byers Investment Associates

By: /s/ Major Joseph Byers II
President

Attest:

/s/ Ethel F. Byers

CARIBBEAN HARBOR CLUB, INC.

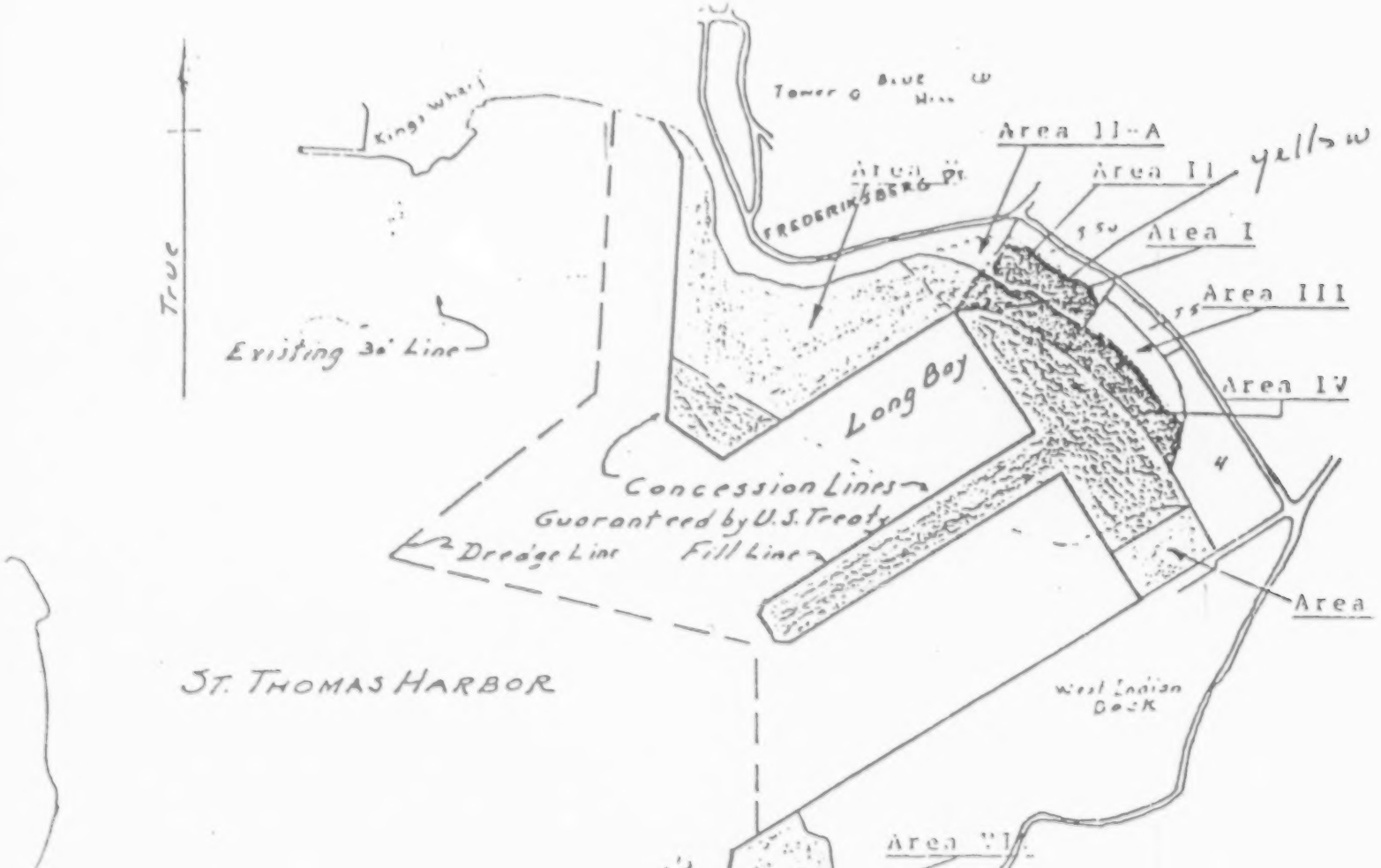
By: /s/ [Illegible]
Chairman of the Board and
Chief Executive Officer

Attest:

/s/ [Illegible]
Secretary

/s/ Jorge Souss
JORGE SOUSS

/s/ Jose Blanco Lubo
JOSE BLANCO LUBO


Tower
Blue
Mill
Area II-A
Area II
yellow
Area I
Area III
Area IV
Area
Area VI
FREDERIKSBERG Pt.
Kings Wharf
True
Existing 30' Line
Long Bay
Concession Lines
Guoranteed by U.S. Treaty
Dredge Line
Fill Line
ST. THOMAS HARBOR
West Indian Dock

LEGEND

Government Recreation Area (II)
Government Title to be confirmed by West Indian Co.,Ltd,
New Land- To be filled by W.I.Co.,Ltd. & Given to Gov't.
New Land Fill- To be divided between W.I.Co. & Yacht Haven Interes
Portion of Concession being given up by W.I.Co.,Ltd.
Portion of Concession being retained by W.I.Co., Ltd.
for future reclamation.

PLAN OF PART OF ST. THOMAS HARBOR
showing
CONCESSION LINES AND PROPOSED SETTLEMENT AND IMPROVEMENT
from
CONCESSION MAP and U. S. G.S. CHART 933
Prepared by: H. O. WELLS, C.E. Scale 1:10.000- Oct.5,1971

Yards
100 0 500 1000

FIRST ADDENDUM TO MEMORANDUM OF UNDERSTANDING DATED AS OF THE 3RD DAY OF OCTOBER, 1973

This FIRST ADDENDUM made as of the 28th day of October, 1975 to Memorandum of Understanding made as of the 3rd day of October, 1973 among THE UNITED STATES DEPARTMENT OF THE INTERIOR (hereinafter called "Interior"), the Government of THE VIRGIN ISLANDS (hereinafter called the "V.I. Government"), THE WEST INDIAN COMPANY, LIMITED (hereinafter called "WICO"), MAJOR JOSEPH BYERS II, MAJOR BYERS INVESTMENT ASSOCIATES (hereinafter collectively called "Byers Group"), CARIBBEAN HARBOR CLUB, INC. and JORGE SOUSS and JOSE BLANCO LUGO.

WHEREAS, Public Law 93-435, 88 STAT. 1210 approved October 5, 1974 (hereinafter "the Act") conveys, subject to the reservations therein set forth, to the Government of the Virgin Islands the right, title and interest of the United States in and to the filled lands and submerged lands which are the subject of this Memorandum of Understanding; and

WHEREAS, the parties understand that the conveyance accomplished by Subsection (a) of the first section of the Act includes any right, title and interest which the United States may acquire under or by virtue of said Memorandum of Understanding, including, without limitation, Section 4 thereof; and

WHEREAS, the parties denied to make provisions regarding the effect of such conveyance; and

WHEREAS, it is desired to correct an error in the description of certain of the areas subject to the Memorandum of Understanding and to correct an error in respect to the V.I. Government agency authorized to monitor dredging.

NOW, THEREFORE, it is agreed that the Memorandum of Understanding dated as of the 3rd day of October, 1973 be amended as follows:

I

(A) There shall be deleted from Section 1(a) the following:

> "and the V.I. Government shall make application to the Secretary of the Interior for conveyance to the V.I. Government, pursuant to the Territorial Submerged Lands Act, of such rights as the United States may have in said Area I."

(B) There shall be deleted from Section 3 the following:

> "and the V.I. Government shall make application to the Secretary of the Interior for conveyance to the V.I. Government, pursuant to the Territorial Submerged Lands Act, of such rights as the United States may have in said Area II and II-A and in Lot 5A, Estate Thomas, Kings Quarter, St. Thomas, V.I. as shown in P.W. File No. G-9-575-T60."

(C) The first line of Section 4 shall be amended to read as follows:

> "WICO shall quitclaim to the V.I. Government such . . . ."

(D) Section 5 shall be amended to read as follows:

"5. *PAYMENT TO THE VIRGIN ISLAND* [sic] *GOVERNMENT.*

The Virgin Island [sic] Government shall receive a payment of Forty-Five Thousand Dollars ($45,000)."

(E) There shall be deleted from Section 6(a) the following:

> "If the requirements of the Territorial Submerged Lands Act are met, the Secretary of the Interior

shall convey to the Government of the Virgin Islands, and"

(F) There shall be deleted from Section 6(d) the following:

"and the Department of the Interior"

(G) There shall be deleted from Section 9 subsections (a) and (b) thereof.

(H) Section 10 shall be modified in the following respects:

(1) By changing the words "to Interior" in the second line of Section 10(a) to read "to the V.I. Government";

(2) By amending Section 10(a)(ii) to read as follows:

"(ii) A conveyance or release from WICO in form satisfactory to the V.I. Attorney General the rights described in Section 4."

(3) By deleting Section 10(c).

(4) By deleting the words "pursuant to the Territorial Submerged Lands Act" from Section 10(d)(i) and (ii).

(I) Section 11 shall be modified by deleting Section 11(ii).

These foregoing amendments to the Memorandum of Understanding shall become effective One Hundred Twenty (120) days after enactment of the Act, subject to the authority of the President to designate certain submerged lands pursuant to Subsection (b)(vii) of the first section of the Act. To the extent that said authority is exercised with respect to the lands which are the subject of the Memorandum of Understanding, these amendments shall be inapplicable.

II

The Memorandum of Understanding is hereby amended effective upon the execution of this Addendum, as follows:

(A) Section 1(b) shall be amended to read as follows:

"(b) *Description.* The easterly boundary of Area I shall be an extension of the easterly boundary of Parcel 5A, Estate Thomas, Kings Quarter, St. Thomas, V.I., namely S40°00′W, as shown on P.W. File No. G9-575 T60. This bearing is now correlated to Lambert Grid and has a bearing of S32°47′39″W. The easterly boundary of Area I shall extend for a distance of approximately 205 feet from the intersection of the course of the easterly boundary of Lot 5A with the existing shore line. The westerly boundary of Area I shall have a direction related to Lambert Grid of S46°21′43″W starting from the bound post at the Southwestern corner of Parcel 5A, and shall extend for a distance of approximately 204 feet from the intersection of the course with the existing shore line. WICO's obligation shall be to provide an additional area of two and one-half (2-1/2) acres for the V.I. Government, seaward of the existing shortline and between the easterly and westerly boundaries above described, in general keeping with the plan of reclamation shown on the Map. Should the area of Area I, as determined by survey pursuant to Section 6(d) be less than two and one-half (2 1/2) acres, WICO may supply the deficiency by further fill seaward on lines in general keeping with the contours of the existing shoreline. Alternatively, WICO may supply the deficiency by an adjustment of the easterly or westerly boundaries of Area I."

(B) Section 7 shall be modified by changing the words "V.I. Health Department" in the fourth line of the sec-

ond paragraph to read "V.I. Department of Conservation and Cultural Affairs (or such other agency of the V.I. Government as may be authorized to monitor such dredging)."

IN WITNESS WHEREOF, the parties have executed this Addendum as of the day and year first above written.

UNITED STATES DEPARTMENT OF INTERIOR

By /s/ Illegible
Director, Office of Territorial Affairs

GOVERNMENT OF THE VIRGIN ISLANDS

By /s/ Cyril E. King
CYRIL E. KING, Governor

THE WEST INDIAN COMPANY, LIMITED

By /s/ Illegible
President

ATTEST:

/s/ Illegible
Secretary

/s/ Major Joseph Byers II
MAJOR JOSEPH BYERS II

MAJOR BYERS INVESTMENT ASSOCIATES

By /s/ Major Joseph Byers II
President

ATTEST:

/s/ Ethel F. Byers

CARIBBEAN HARBOR CLUB, INC.

By /s/ Illegible
Chief Executive Officer

ATTEST:

/s/ Illegible

/s/ Jorge Souss
JORGE SOUSS

/s/ Jose Blanco Lugo
JOSE BLANCO LUGO

SECOND ADDENDUM TO MEMORANDUM OF UNDERSTANDING DATED AS OF THE 3RD DAY OF OCTOBER, 1973

(Revised)

This SECOND ADDENDUM made as of the — day of ————, 1981, to Memorandum of Understanding made as of the 3rd day of October, 1973 among the GOVERNMENT OF THE VIRGIN ISLANDS (hereinafter called the "V.I. Government"), THE WEST INDIAN COMPANY, LIMITED (hereinafter called WICO), THE ESTATE OF MAJOR JOSEPH BYERS II, MAJOR BYERS INVESTMENT ASSOCIATES (hereinafter collectively called "Byers Group"), CARIBBEAN HARBOR CLUB, INC and JORGE SOUSS and JOSE BLANCO LUGO, as amended by a First Addendum thereto made as of the 28th day of October, 1975.

WHEREAS, subsequent to said Memorandum of Understanding and the First Addendum thereto, Act No. 4248. Twelfth Legislature of the Virgin Islands was enacted, adding to Title XII, Virgin Islands Code, a new Chapter 21, entitled "Virgin Islands Coastal Zone Management"; and

WHEREAS, WICO has asserted that Act No. 4248 constituted a material breach of the Memorandum of Understanding and that the V.I. Government has committed certain other breaches of the Memorandum of Understanding which breaches are continuing, and that such breaches entitle WICO to damages from the V.I. Government in amounts exceeding $5,000,000 and other relief; and

WHEREAS, the V.I. Government denies that any breaches have occurred; and

WHEREAS, the parties wish to compose their differences and to further amend the Memorandum of Understanding.

NOW, THEREFORE, it is agreed that the Memorandum of Understanding dated as of the 3rd day of October, 1973, as amended by the First Addendum thereto dated as of the 28th day of October, 1975, be further amended and restated to read in full as follows:

1. ADDITIONAL AND MODIFIED RECERATION AREA

(a) *General.* WICO shall fill the areas marked Area A-1 and Area A-2 on the attached plan, captioned Plan attached to Second Addendum to Memorandum of Understanding, hereinafter referred to as the "Plan".

(b) *Character of Fill.* The fill to be provided for the reclaiming of Areas A-1 and A-2 shall consist substantially of dredge fill from St. Thomas Harbor or clean upland fill in WICO's discretion. It is specifically agreed that WICO shall be obligated to provide only such bulkheads, retaining walls, rock fill or other structural improvements as are required by Federal law or in the judgment of the V.I. Government (presently represented by the Department of Conservation and Cultural Affairs ("DCCA")) are necessary to meet minimum sound engineering practice. WICO shall be entitled to place said Improvements on the Area to be retained by WICO.

(c) *Time Limits.* WICO shall commence filling Areas A-1 and A-2 not later than nine (9) months from the Closing Date, and shall complete the filling within six (6) months from commencement. However, such time limits shall be extended by the period of any delay caused by the United States or the V.I. Government or of any cause of delay reasonably beyond the control of WICO or its contractors, including without limitation, intervention by or delays caused by civil, naval or military authorities, acts of God (other than ordinary storms of inclement weather conditions), explosions, fires, strikes, riots, insurrections, war or embargoes. In the event of such a delay, WICO shall give written notice to the V.I. Government

within seven (7) days after commencement of any such delay and shall specify the reason for the delay and the likely length of the delay, and shall give similar notice of the date when the delay ends. In addition to such occasions for delays, WICO's obligation to commence filling within nine (9) months is subject to the availability on reasonable commercial terms of a dredge adequate to perform the fill required within the restrictions on dredging elsewhere provided in this Agreement as well as the provisions of applicable law.

(d) *Conveyances.* (1) At the Closing WICO shall deliver into an escrow account to be established a quitclaim deed conveying to the V.I. Government all right, title and interest of WICO in that portion of Area A on the Plan marked Area A-1, such Area A-1 to consist of 2.1 acres. The lines shown on the Plan are approximate, it being understood that the area to be conveyed is 2.1 acres, seaward of the existing shoreline and between the existing shoreline adjacent to Veterans Drive and the existing shoreline of Areas II and II-A shown on the Map annexed to the original Memorandum of Understanding, in general keeping with the area shown on the Plan. Should the area of Area A-1 be less than 2.1 acres, WICO may supply the deficiency by further fill seaward on lines in general keeping with the contours of the shoreline existing immediately prior to commencement of the fill. Alternatively, WICO may supply the deficiency by an adjustment of the easterly boundary of Area A-1.

(2) At the Closing the V.I. Government shall deliver into an escrow account to be established a quitclaim deed conveying to WICO all right, title and interest in that portion of Area A on the Plan marked Area A-2, such Area A-2 presently being submerged lands and consisting of approximately 2.2 acres.

(3) At the Closing the V.I. Government shall deliver into an escrow account to be established a quitclaim deed conveying to WICO all right, title and interest of the V.I.

Government in the area shown on the Plan as Area A-3, such Area A-3 to consist of 1.1 acres, which land is presently filled land. The lines shown on the Plan are approximate, it being understood that the area to be conveyed is 1.1 acres. To the extent that Area A-3 is more or less than 1.1 acres, the excess or deficiency shall be adjusted by adjusting the westerly boundary of Area A-3.

(4) The deeds referred to in subsections (2) and (3) hereof shall include the right on the part of WICO to construct docks and piers for marina purposes within the area shown as A-4 on the Plan, but WICO shall not acquire title to such Area A-4.

With respect to Area A-4, until WICO gives notice to the V.I. Government that it is proceeding with the construction of docks and piers for marina purposes, the Department of Conservation and Cultural Affairs shall have the right to grant mooring rights, but such rights shall be terminable on not more than 90 days' notice.

2. (Deleted)

3. CONFIRMATION OF TITLE TO V.I. GOVERNMENT FILLED LAND

WICO shall quitclaim to the V.I. Government all rights it may have on the yellow area (Area II) on the Map except Area A-3 on the Plan, and to Area II-A on the Map.

4. TERMINATION OF WICO'S UNEXERCISED CONCESSION RIGHTS

WICO shall quitclaim to the V.I. Government any and all such remaining unexercised rights to reclaim and fill as WICO may have under grant from the Government of Denmark by letters dated January 18 and April 16, 1913. The United States may enter judgment in the lawsuit captioned *United States v. West Indian Company, Ltd., et al.*, Civil No. 337-1968, now pending in the District

Court of the Virgin Islands, against all other parties, without costs as to any party. The order entering judgment shall save to WICO all rights to the harbor basin heretofore constructed by WICO; provided, however, that Area VI may not be employed by WICO for reclaiming. Nothing shall interfere with WICO's rights to use Area VI for or in connection with piers, docks or wharves.

The attached composite map of Long Bay, St. Thomas entitled "Composite Map of Long Bay, February, 1981," generally describes the areas to be quitclaimed to the V.I. Government and the areas to be retained by WICO. The composite map is intended to be generally descriptive, but shall not control as to specific metes and bounds.

5. OBLIGATION TO REPLACE TENNIS COURTS

(a) WICO shall be obligated to replace the tennis courts presently located on Area A-3 on the following terms:

(1) The V.I. Government has the option to have the courts relocated either on Area A-1 when reclaimed or at another location of its choosing in St. Thomas, provided that such location is level and drained.

(2) On 60 days' notice to proceed, which notice shall indicate the location chosen, WICO shall commence replacement of the tennis courts and shall complete them with due diligence; provided that if the courts are to be relocated on Area A-1, notice shall not be given until reclaiming has been completed.

(b) In the alternative, the V.I. Government may choose to be paid $45,000.

(c) Within 60 days of the Closing, the V.I. Government shall indicate which alternative it has selected.

(d) In connection with the reclaiming of Area A-1 and Area A-2, if necessary WICO shall have the right of access over Area A-3.

6. CONVEYANCES

(a) *General.* The Government of the Virgin Islands shall convey by Quitclaim Deed the Filled Lands and Submerged Lands hereinafter described (and the right to reclaim the same) in Long Bay, St. Thomas Harbor, in part to WICO and in part to the Byers Group. The lands to be conveyed are:

A. *Filled Lands.* Lot 5, Estate Thomas, Kings Quarter, as extended by fill placed in 1963 seaward of Lot 5 and Lot 4, and shown on the Map as Area III.

B. *Submerged Lands.* The area shown in dark blue on the attached Map, designated Area IV and Area VII-A.

C. The lands described in Section 1 as amended by this Second Addendum.

The Filled Lands and Submerged Lands are more precisely described below.

All of the Submerged Lands shall be conveyed to WICO. The Filled Lands, Area III on the Map, and the dark blue area on the Map (Area IV), will be divided among WICO, the CARIBBEAN HARBOR CLUB, INC., and Jorge Souss and Jose Blanco Lugo by separate Agreement between them.

(b) *Description of Filled Lands.* The Filled Lands consist of (a) Lot No. 5, Estate Thomas, Kings Quarter, as described in P.W. Drawing No. G-9-432T56 annexed to deed dated September 11, 1956 from WICO to Joseph Byers II, less the portion thereof conveyed as Lot No. 5A Estate Thomas, Kings Quarter, by deed dated February 15, 1961 from Joseph Byers II and Ethel F. Byers to the Government of the Virgin Islands, as described in P.W. File No. G9-57-5-T60 (said Lot No. 5, as so reduced, being elsewhere referred to in this Agreement as "Lot No. 5"); plus (b) the fill area seaward of Lot No. 5 and

Lot No. 4, Estate Thomas, Kings Quarter, placed by the V.I. Government during dredging operations in 1963.

(c) *Deed to Filled Lands; Escrow.* The grantee to be named in the deed to the Filled Lands shall be as provided in Paragraph 10(d)(ii). At the Closing the deed shall be delivered in escrow to Flint National City Bank, St. Thomas, U.S. Virgin Islands to be delivered on joint written instructions from CARIBBEAN HARBOR CLUB, INC., Jorge Souss, Jose Blanco Lugo, the Byers Group and WICO.

(d) *Description of Submerged Lands; Survey.* The Submerged Lands are shown as Area IV on the Map. A survey has heretofore been made and accepted showing the precise description of all Areas shown on the Map. WICO will undertake to provide such additional surveys as may be necessary to show the changes accomplished by the Second Addendum, which shall be subject to the approval of the V.I. Government, which approval shall, however, not unreasonably be withheld. Failure to take specific written exceptions to such survey within sixty (60) days following receipt thereof shall conclusively establish acceptance thereof.

(e) *Character of Rights.* The right on WICO's part to reclaim Areas IV, A-2 and VII-A is a right on WICO's part to perform the reclaiming and does not impose an obligation on WICO's part to be performed.

(f) *Character of Fill.* The fill of Areas IV, A-2 and VII-A shall consist substantially of dredge fill from St. Thomas Harbor or clean upland fill in WICO's discretion, or in respect of Area VII-A, in WICO's discretion, in whole or in part the construction of docks, wharves, or piers. WICO shall be entitled to provide such bulkheading, retaining wall, dock fill and similar structures as it may deem appropriate.

(g) *Restrictions on Use of Area VII-B.* Area VII-B may not be employed by WICO for reclaiming but only

for the construction of docks or piers for marina purposes, and breakwater or causeway for protection of marina, and WICO shall not obtain title to such Area VII-B.

With respect to Area VII-B, until WICO gives notice to the V.I. Government that it is proceeding with the construction of docks and piers for marina purposes, the Department of Conservation and Cultural Affairs shall have the right to grant mooring rights, but such rights shall be terminable on not more than 90 days' notice.

(h) *Time Limits.* As to Area IV, WICO shall commence filling not later than ten (10) years following the Closing Date. These time limits are to be extended as to Area VII-A by the duration of any major decline in tourism in St. Thomas, which shall mean any six-month period during which the number of visitors to St. Thomas shall be thirty percent (30%) less than during the comparable period of 1972; the period of extension for this reason shall in no event exceed five (5) years.

Once work is commenced as to a particular Area, WICO shall proceed with reasonable diligence in completion of that Area. With respect to Area VII-A, WICO may elect to reclaim a portion of the Area without relinquishing the balance, provided that reclaiming of the remaining portion or portions shall be commenced within the same ten (10) year time limit above provided. If WICO fails, without reasonable cause, so to proceed to completion, the V.I. Government shall have the right, after ninety (90) days' written notice (which shall include a demand to proceed) to terminate the reclaiming rights as to the uncompleted portion of such Area, other than Area VII-A. With respect to Area IV, such notice shall also be sent to CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo, who, upon WICO's failure to proceed shall have the right to complete Area IV at WICO's expense. Reasonable cause shall be the causes described in Section 1(c). For pur-

poses of this Subparagraph, work shall not be deemed to have commenced as to a particular Area because of the mere placing of incidental fill resulting from the performance of work in some other Area.

7. DREDGING

The dredge area shall be the area from Anchorage Area B on U.S. Coast Guard and Geodetic Survey Chart No. 933 to and along the WICO dock and in Anchorage Area A, on Chart No. 933 and within or adjacent to Area VII-A as shown on the Plan, to such limits as necessary for the accomplishment of the fill.

Dredging is to be performed by the hydraulic suction type system and not by open mechanical means in order to avoid undue effects on water quality. Dredging will be monitored by the V.I. Department of Conservation and Cultural Affairs (or such other agency of the V.I. Government as may be authorized to monitor such dredging) at the expense of WICO in order to ensure observance of this requirement as well as for compliance with any certifications under the Federal Water Pollution Control Amendments of 1972.

8. [Deleted.]

9. ENDORSEMENT OF V.I. GOVERNOR

This Agreement shall constitute an endorsement of the Governor of the Virgin Islands in favor of an application, pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403) and Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1344) and other related acts, for a United States Army Corps of Engineers permit or other authorizations, authorizing the dredging, filling, and other work contemplated by this Agreement.

Notwithstanding the foregoing, WICO shall not be relieved of the requirement, if applicable, of obtaining a

certification under Section 401 of the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. § 1341).

10. CLOSING

The Closing shall take place on thirty (30) days' prior written notice by WICO to the other parties. Such date is referred to in this Agreement as the Closing Date. The Closing shall take place at the offices of the Attorney General of the Virgin Islands, St. Thomas, V.I. At or prior to the Closing, the following shall be delivered:

(a) WICO, the Byers Group, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo shall deliver to the V.I. Government:

(i) A conveyance or lease from WICO in form satisfactory of the V.I. Attorney General of the rights described in Section 4.

(ii) Stipulations from each of the parties (other than the United States) to *United States v. West Indian Company, Ltd., et al.*, Civil No. 337-1968, District Court of the Virgin Islands, in form satisfactory to the Solicitor or Assistant Solicitor of Interior consenting to the entry of judgment in favor of the United States and against all other parties, without costs as to any party, including the reservation of rights described in Section 4.

(iii) An opinion of counsel for WICO that WICO is a corporation duly organized and existing under the laws of the Virgin Islands, and this Agreement and all Instruments to be delivered hereunder by WICO have been duly authorized, executed and delivered by WICO and are legal, valid and binding obligations of WICO enforceable in accordance with their terms.

(iv) An opinion of counsel for the Byers Group that Major Byers Investment Associates is a corpo-

ration duly organized and existing under the laws of the Virigin Islands; that this Agreement and all instruments to be delivered hereunder by the Byers Group have been duly authorized and delivered by, and are legal, valid and binding obligations of, the person or corporation comprising the Byers Group executing the same.

(v) An opinion of counsel for the CARIBBEAN HARBOR CLUB, INC. that it is a corporation duly organized and existing under the laws of the U.S. Virgin Islands and has duly qualified to engage in business in the Virgin Islands; that CARIBBEAN HARBOR CLUB, INC. has succeeded to all right, title and interest to Lot No. 5, as defined in Section No. 6(b), except as to the one-fourth share owned by Jorge Souss and Jose Blanco Lugo; that this Agreement and all instruments to be delivered hereunder by CARIBBEAN HARBOR CLUB, INC. have been duly authorized, executed and delivered by, and are legal, valid and binding obligations of CARIBBEAN HARBOR CLUB, INC.

(b) WICO, the Byers Group and CARIBBEAN HARBOR CLUB, INC. shall deliver ot the V.I. Government:

(i) a quitclaim deed from WICO to the V.I. Government in form satisfactory to the V.I. Attorney General, quitclaiming such rights as it may have in Area II (excluding Area A-3) and Area II-A.

(ii) Opoinions of counsel described in Subsections (c)(iii), (iv) and (v) of this Section.

(c) The V.I. Government shall deliver to WICO, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo:

(i) A conveyance from the V.I. Government by quitclaim deed, in form satisfactory to counsel for WICO, conveying subject to the appropriate condi-

tions of the Agreement, to WICO of all right, title and interest of the V.I. Government in Areas IV and VII-A, together with rights to construct and maintain marinas in Area VII-B and the conveyances described in Section 1(D)(2) and (3).

(ii) Conveyances by quitclaim deed, in form satisfactory to counsel for WICO, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo, from the V.I. Government conveying all right, title and interest of the V.I. Government in the Filled Lands described in Section 6(b), as follows:

(a) As to that portion of the Filled Lands shown in Public Works drawing No. F9-1884-T66, an undivided three-fourths (3/4) interest to CARIBBEAN HARBOR CLUB, INC., and the remaining undivided one-fourth (1/4) interest to Jorge Souss and Jose Blanco Lugo, or to such other grantee or grantees as shall be stated in a joint written notice to the V.I. Government signed by said parties and WICO.

(b) To CARIBBEAN HARBOR CLUB, INC., the remaining portion of the Filled Lands, or to such other grantee or grantees as shall be stated in a joint written notice to the V.I. Government signed by CARIBBEAN HARBOR CLUB, INC. and WICO.

(iii) An opinion of the Attorney General of the Virgin Islands to the effect that this Agreement and the conveyances hereunder have been duly authorized, executed and delivered and are legal, valid and binding obligations enforceable in accordance with their terms.

(d) (i) An escrow shall be established with First National City Bank or other mutually acceptable escrow agent, effective on the Closing. There shall be deposited

with the escrow agent the deeds and conveyances and stipulations described in Sections 10(a)(i) and (ii), 10(B)(i) and 10(c)(i) (other than the conveyances relating to Area VII-A), (ii) and (iii). The V.I. Government and WICO shall cause the escrow agent to deliver such deeds and conveyances as follows:

(x) Upon acceptance of Area A-1 in accordance with Section 17 hereof; and

(y) The completion of reclaiming of Areas IV and A-2; provided, however, that if WICO shall have reclaimed less than all of such Areas and its rights to reclaim the balance shall have terminated, the conveyances shall be amended so as to exclude any portion of the Area as to which the reclaiming rights shall have terminated.

(ii) An escrow shall be established with First National City Bank or other mutually acceptable escrow agent, effective on the Closing. There shall be deposited with the escrow agent the deeds and conveyances relating to Area VII-A as follows:

Upon completion of a portion of Area VII-A, if WICO shall have proceeded to reclaim a portion, then a conveyance amended to include such portion shall be delivered when such portion is completed; or if the whole is completed, then a conveyance of the whole shall be delivered; provided, however, that if WICO shall have reclaimed less than all of such Areas and its rights to reclaim the balance shall have terminated, the conveyances shall be amended so as to exclude any portion of the Area as to which the reclaiming rights shall have terminated.

The parties shall pay the fees of the escrow agent as follows: WICO one-half and the V.I. Government one-half.

11. GENERAL CONDITIONS

(a) (i) The obligation of WICO to close this Agreement shall be subject to the following conditions:

(x) *Army Corps of Engineers Permit.* The Army Corps of Engineers shall have granted, pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403) and Section 404 of the Federal Water Pollution Control Act (33 U.S.C. § 1344) and other related acts, permit or other authorizations authorizing the dredging, filling, and other work contemplated by this Agreement, which permit or authorizations shall be in form and substance satisfactory to counsel for WICO.

(y) *Compliance with Other Laws.* All appropriate action required to have been taken under the National Environmental Protection Act of 1969 (42 U.S.C. §§ 4321-4347), the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. § 1251, et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666c) and any other applicable laws, both under Federal and Virgin Islands law, have been taken.

(z) *Enactment of Laws.* There shall have been enacted into law an amendment to the Virgin Islands Coastal Zone Management Act in the form annexed hereto as Exhibit A or in such other form which shall in form and substance be satisfactory to counsel for WICO and satisfactory to counsel for the Department of Conservation and Cultural Affairs, V.I. Government.

(ii) The obligation of the V.I. Government to close this Agreement shall be subject to the following condition:

There shall have been enacted into law an amendment to the Virgin Islands Coastal Zone Manage-

ment Act in the form annexed hereto as Exhibit A or in such other form which shall in form and substance be satisfactory to counsel for WICO and satisfactory to counsel for the Department of Conservation and Cultural Affairs, V.I. Government.

(b) Within 6 months after filling of the relevant Areas III, IV, A-2, A-3 and VII-A will be zoned in accordance with the permitted uses as provided herein. If the land should be zoned other than to permit the uses provided herein, then the uses provided herein, shall be permitted subject to the provisions of Section 12(b).

Uses Permitted for Areas III, IV, A-2 and A-3

Hotel, Motel, Guesthouse
Restaurant, Bar, Coffee Shop
Marina and allied service facilities
Apartments, Dwellings
Shops
Offices

(Customary accessory uses are permitted)

Uses Permitted for Area VII-A

Waiver dependent, and water related commercial-industrial uses and marina facilities
Incuding warehousing
Building supplies
Restaurants
Professional offices and access to adjacent dock and uplands.

One or more of the above categories of uses are permitted in a built-up area not exceeding a total of 40% of total land area, which may be executed in one building or several buildings of one or more stories.

Height Restriction

No structure shall exceed a total of three stories.

Required Parking and Loading Area

Off-street parking and off-street loading shall be provided in accordance with the Virgin Islands Zoning Law.

Usable Open Space

In addition to the requirements set forth herein for permitted lot occupancy and for off-street parking, thirty (30) percent of the area of the zoning lot shall be reserved for usable open space.

Number of Parcels

The plots may be developed separately, or if joined in title, as one plot at the owner's option.

12. (a) DEVELOPMENT TIME FRAME

The provisions of this Agreement relating to zoning, permitted uses, height restriction, required parking and loading area, usable open space and the impact of the Virgin Islands Coastal Zone Management Act shall be in effect with respect to each Area provided that development of such Area is commenced within ten (10) years after filling of such Area and completed within fifteen (15) years after filling of such Area. Any portion of the development not commenced within ten (10) years and completed within fifteen (15) years after filling, and any development beyond that explicitly contemplated by this Agreement shall be subject to then current laws. This shall in no way impair rights to repair, maintain and reconstruct structures, roads, etc. which have been erected during said time periods.

(b) IMPACT OF VIRGIN ISLANDS COASTAL ZONE MANAGEMENT ACT

The specific provisions of this Agreement shall govern as to WICO's right to reclaim and to acquire title to reclaimed areas and to develop, and as to permitted uses,

height restriction, usable open space and parking which shall not be matters of discretion, but as to any matters not specifically covered by the Agreement, such as utilities, siting, performance standards, design and landscape, WICO shall be subject to the requirement of a Coastal Zone Management permit in accordance with the provisions of the Virgin Islands Coastal Zone Management Act and the goals and policies of the Virgin Islands Coastal Zone Management Act.

(c) All parties agree to use their best efforts to meet the conditions and otherwise carry out this Agreement. Without limiting this obligation, the V.I. Government shall confirm to the Army Corps of Engineers that all necessary local permits have been issued and that the V.I. Government fully supports the issuance of the Corps of Engineers permit enabling the project, as herein modified, to proceed.

13. PRESERVATION OF MODIFIED SHORELINES

This Agreement adjusts the differences among the parties as to reclamation rights in Long Bay, St. Thomas. Consequently, it is agreed that neither the United States nor the V.I. Government will reclaim except for public purposes pursuant to the powers of eminent domain, or permit others to reclaim, submerged lands seaward of the areas for reclamation shown on the Map, as modified by this Second Addendum, and the Plan.

14. REPRESENTATIVE OF BYERS GROUP

The Byers Group designates James Bough, Esq., P.O., Box 879, St. Thomas, V.I., as its attorney-in-fact with respect to all matters relating to this Agreement, performance or modification thereof. No member of the Byers Group may terminate the authority of such attorney-in-fact without giving written notice, by registered

mail, to each of the other parties to this Agreement. Such notice shall designate a successor attorney-in-fact. Such designation of an attorney-in-fact or successor shall survive the death or incapacity of any individual member of the Byers Group.

15. REPRESENTATVE OF V.I. GOVERNMENT

The Representative of the V.I. Government authorized to represent the V.I. Government with respect to all matters relating to this Agreement, performance or modification thereof, shall be the Attorney General of the Virgin Islands, or such other government official as the V.I. Governor may from time to time designate as successor representative by written notice by registered mail to the other parties hereof.

16. ASSIGNABILITY

(a) WICO's rights to dredge and reclaim are not to be assignable. However, WICO is to be entitled to proceed through a limited partnership, syndicate or other legal form of joint venture so long as WICO remains responsible for fulfillment of its obligations hereunder and retains a substantial interest in such a joint venture.

(b) Once reclaimed, WICO shall have title to and ownership of the areas filled (except as otherwise provided as to Area IV and except as to Area VII(B, subject to applicable zoning requirements, and provided that WICO is then in compliance with Section 2 of this Agreement requiring WICO to fill and provide land for the V.I. Government.

Except as otherwise specifically provided herein, this Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

17. NOTICES AND COMMUNICATIONS

To the V.I. Government

Attorney General of the Virgin Islands
Department of Law
P.O. Box 280
St. Thomas, U.S. Virgin Islands 00801

cc: Commissioner
Department of Conservation and Cultural Affairs
P.O. Box 4340
St. Thomas, U.S. Virgin Islands 00801

To WICO

The West Indian Company, Limited
P.O. Box 660
St. Thomas, U.S. Virgin Islands 00801
Attn: President

cc: Thomas D. Ireland, Esq.
P.O. Box 100
St. Thomas, U.S. Virgin Islands 00801, and

Haight, Gardner, Poor & Havens
One State Street Plaza
New York, New York 10004
Attn: S.C. Miller, Esq.

To Byers Group

James A. Bough, Esq.
as Representative for Byers Group
P.O. Box 879
St. Thomas, U.S. Virgin Islands 00801

TO CARIBBEAN HARBOR CLUB, INC.

P.O. Box 13171
Santurce, Puerto Rico 00908
Attn: Chairman of the Board

cc: Mr. Hector Celnos
P.O. Box 9069
Santurce, Puerto Rico 00908

William C. Loud, Esq.
P.O. Box 1686
St. Thomas, U.S. Virgin Islands 00801

To Jorge Souss, Esq.

Playa Grande Condominium
Apartment 6-F
Santurce, Puerto Rico 00911

To Jose Blanco Lugo

c/o Jorge Souss, Esq.
Playa Grande Condominium
Apartment 6-F
Santurce, Puerto Rico 00911

18. ACCEPTANCE

Upon receipt of a written notice from WICO that work contemplated with respect to an Area has been completed and is ready for final inspection and acceptance, the Representative of the V.I. Government (or in the case of Area IV, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo), shall promptly cause such inspection to be made and

(a) shall promptly issue a final acceptance certificate under his signature, stating that such work is acceptable and fully performed and accepted pursuant to the terms and conditions of this Agreement and such certificate shall be deemed to be a full performance and discharge of the obligation of WICO thereunder, without any agreement, representation or warranty, expressed or implied, by WICO as to its physical condition, or fitness for any use whatsoever against any defects whether patent or latent;

(b) In lieu of such certificate, shall promptly deliver to WICO in writing under his signature a statement stating a just and true reason for not issuing such certificate and stating the defects, if any, to be remedied, to entitle WICO to such certificate. Failure to deliver such a statement within sixty (60) days of receipt of notice shall constitute acceptance within the terms of Subparagraph (a).

19. MISCELLANEOUS

(a) *Eminent Domain.* Nothing in this Agreement shall affect the rights of the United States or the V.I. Government to acquire by eminent domain or condemnation any of the lands or rights therein which are the subject of this Agreement.

(b) *Extensions of Time and Other Matters Relating To Performance.*

Following the Closing, any matters relating to performance or modification of this Agreement may be adjusted or disposed of by agreement between the V.I. Government and WICO, provided that no material enlargement of the seaward bounds of the fill areas may be accomplished without compliance with the Virgin Islands Coastal Zone Management Act, Act No. 4248.

(c) *Rights of Others.* As to Area VII-A, it is understood that WICO's rights to reclaim are subject to WICO's obtaining appropriate consents, if any, from the riparian owners (other than WICO itself). As to Area VII-B, WICO's rights to construct docks and piers for marina uses shall be subject to appropriate consents, if any, from the riparian owners (other than WICO itself).

(d) *WICO Authorized to Make Permit Applications.*

To the extent that it may be necessary or advisable for the Byers Group or CARIBBEAN HARBOR CLUB, INC., or Jorge Souss, or Jose Blanco Lugo to join in any of the following applications, the Byers Group, CARIB-

BEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo authorize WICO or its attorneys on behalf of the Byers Group, CARIBBEAN HARBOR CLUB, INC., Jorge Souss and Jose Blanco Lugo, respectively, to join in such applications and to take such steps as may be advisable to accomplish the same:

(i) an application (including amendments, renewals, and extensions thereof), pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403) and Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1344) and other related acts, for a United States Army Corps of Engineers permit or other authorizations, authorizing the dredging, filling, and other work contemplated by this Agreement.

(ii) an application (including amendments, renewals, and extensions thereof), pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C § 1341), for certification, authorizing the dredging, filling and other work contemplated by this Agreement.

(c) *No Further Charges.* No fee, rental or charge shall be imposed for rental or similar use or for taking dredge fill pursuant to the terms of this Agreement.

20. RELEASE OF CLAIMS

Upon the enactment of the legislation described in Section 11(a)(iii) and (iv) and upon the performance of such acts and the delivery of such documents as are necessary to carry out the V.I. Government's obligations under this Agreement as amended by this Second Addendum, the V.I. Government shall be released from all claims by WICO arising out of or relating to any alleged branch or nonperformance by the V.I. Government under the Memorandum of Understanding as amended by the First Addendum thereto.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the day and year first above written.

GOVERNMENT OF THE VIRGIN ISLANDS

By /s/ Juan Luis
Governor 4/22/81

THE WEST INDIAN COMPANY, LIMITED

By /s/ [Illegible]
President 4/23/81

Attest:

/s/ [Illegible]
Secretary

ESTATE OF MAJOR JOSEPH BYERS III

By /s/ Ethel F. Byers

MAJOR BYERS INVESTMENT ASSOCIATES

By /s/ Ethel F. Byers
President

Attest:

/s/ [Illegible]

ALL AMERICA HOLDING CORPORATION,
as Successor in Interest to
CARIBBEAN HARBOR CLUB, INC.

By /s/ [Illegible]
Chief Executive Officer

Attest:

/s/ [Illegible]

/s/ Jorge Souss
JORGE SOUSS

/s/ Jose Blanco Lugo
JOSE BLANCO LUGO

ESTATE OF MAJOR JOSEPH BYERS III

By /s/ [Illegible]

MAJOR BYERS INVESTMENT ASSOCIATES

By /s/ [Illegible]
President

Attest:

/s/ [Illegible]

ALL AMERICA HOLDING CORPORATION,
as Successor in Interest to
CARIBBEAN HARBOR CLUB, INC.

By /s/ [Illegible]
Chief Executive Officer

Attest:

/s/ [Illegible]
Assistant Secretary

/s/ Jorge Souss
JORGE SOUSS

/s/ Jose Blanco Lugo
JOSE BLANCO LUGO

(BILL 16-0607)

No. 5188

(Became law August 11, 1986)

To Repeal Act Nos. 3326 and 4700 Pertaining to the West Indian Company, Ltd. and for Other Purposes.

Be it enacted by the Legislature of the Virgin Islands:

Section 1. (a) Act No. 3326 (Bill No. 5632), enacted October 30, 1972, is hereby repealed in its entirety.

(b) Act No. 4700 (Bill No. 14-0664), enacted April 7, 1982, is hereby repealed in its entirety.

Section 2. Any and all activities that are conducted in Long Bay by the West Indian Company, Ltd. shall comply with the provisions of the Coastal Zone Management Act, Title 12, chapter 21, Virgin Islands Code. Any permit for the development or occupancy of the submerged lands in Long Bay must be sent to the Governor for approval and the Legislature for ratification.

The foregoing Bill having been vetoed by the Governor of the Virgin Islands on July 21, 1986, and subsequently repassed by the Sixteenth Legislature of the Virgin Islands on August 11, 1986, has become law as of August 11, 1986, on which date the Legislature voted to override the veto.

Derek M. Hodge
Acting Lieutenant Governor

ACT NO. 4700

BILL NO. 14-0664

FOURTEENTH LEGISLATURE OF THE
VIRGIN ISLANDS OF THE UNITED STATES

Regular Session

1982

To amend Title 12, Chapter 21, Virgin Islands Code, pertaining to coastal zone management

—0—

BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. Title 12, Section 905, Subsection (i), Virgin Islands Code, is amended by adding thereto a new paragraph (5) to read as follows:

> "(5) any treaty right, grant, or concession which was vested in any party prior to the date of enactment of this Chapter and which in whole or in part has been expressly recognized by statute, court order, or lawfully executed agreement as binding on the Government of the Virgin Islands, whether such recognition precedes or succeeds the date of enactment of this Chapter, and subject to any agreements or Memorandums of understanding pertaining to such right, grant, or concession which have been or may hereafter be ratified by law."

SECTION 2. The Agreement entitled "The Second Addendum to Memorandum of Understanding Dated as of the 3rd Day of October, 1978", dated the 22nd day of September 1981, between the Government of the Virgin Islands, the West Indian Company, Limited, and Others, which is attached hereto as Appendix A and by this reference made a part hereof, is hereby ratified with the full force and effect of law, and the Governor and Departments of the Government of the Virgin Islands, and

all Instrumentalities thereof are authorized and directed, within the scope of their jurisdiction, to execute the terms of such Agreement.

Thus passed by the Legislature of the Virgin Islands on March 24, 1982.

Witness our Hands and the Seal of the Legislature of the Virgin Islands this 24th Day of March, A.D., 1982.

/s/ Ruby M. Rouss
RUBY M. ROUSS
President

/s/ Ruby Simmonds
RUBY SIMMONDS
Legislative Secretary

(Bill 5632)

No. 3326*

(Approved October 30, 1972)

Bill Relating to Certain Lands Located at Long Bay, St. Thomas.

WHEREAS the United States has instituted an action in the District Court of the Virgin Islands, captioned "United States of America v. The West Indian Company, et al., Civil No. 337-1968" To Quiet Title; and

WHEREAS there has been an offer of settlement and compromise put forward by the West Indian Company; and

WHEREAS the offer of settlement and compromise has been the subject of extensive study, investigation and consideration by the Government of the Virgin Islands, acting through the Legislature and the Governor; and

WHEREAS it appears that the offer of settlement and compromise is in the public interest; and

WHEREAS the District Court Judge has recommended consideration of the settlement offer by the Governor and Legislature of the Virgin Islands; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

Section 1. The Governor of the Virgin Islands in behalf of the Government of the Virgin Islands shall recommend to the United States Department of Interior and the United States Department of Justice the acceptance and implementation of an offer of settlement and compromise substantially in the form presented by The West Indian Company in *Statement of The West Indian Company re Proposal for Reclaiming Part of Long Bay Under Its Danish Concession*, dated October 26, 1971, as

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* Enacted as part of the Fourth Special Session.

modified by letter from The West Indian Company to Governor Melvin E. Evans, dated November 2, 1971; provided that the West Indian Company will deed to the Government of the Virgin Islands a waterfront highway in front of its proposed development at Frederiksburg Point, in the event such development is undertaken and completed; and provided further that the West Indian Company shall stipulate the period of time within which such Frederiksburg Point development will be undertaken.

Approved October 30, 1972.

SIXTEENTH LEGISLATURE OF THE
VIRGIN ISLANDS

REGULAR SESSION

JULY 9, 1986

PART I

CHARLOTTE AMALIE,
ST. THOMAS, VIRGIN ISLANDS

BEFORE:

Senator Derek M. Hodge

APPEARANCES:

Senator John A. Bell
Senator Lorraine L. Berry
Senator Virdin C. Brown
Senator Adelbert M. Bryan
Senator Hector L. Cintron
Senator Clement Magras
Senator Cleone Creque Maynard
Senator James A. O'Bryan, Jr.
Senator Lilliana Belardo de O'Neal
Senator Holland Redfield, II
Senator Ruby M. Rouss
Senator Allan Paul Shatkin
Senator Iver A. Stridiron

* * * *

INDEX

Regular Session—Part II—July 9, 1986

* * * *

[40] SENATOR HODGE: Senator Stridiron?

SENATOR STRIDIRON: Yes. Mr. President, this amendment raises perhaps what would be a most interesting question to ask of the proponent as well as other members of the Legislature. With regard to West Indian Company, what is it that the people want? Do they want us to stop the dredging? Or do they want us to allow the dredging and then change the zoning? Because basically this amendment says, if you wish you can go forward and dredge and fill. But we will have rezoned it so that the public will have use of the property. What is that the people want?

I reserve the balance of my time.

SENATOR HODGE: Senator Bryan?

SENATOR BRYAN: Thank you, Mr. President. To the previous speaker, the amendment [41] added to the bill to repeal Acts 4700 and 3326, would then designate the existing area as public. And would prevent anybody or person or group or corporation from erecting any structures not consistent with the zone that is being created. What activities are going on right now as far as the dredging is concerned is a situation that is being handled by Conservation. As a matter of fact, I think a cease and desist order was issued sometimes last week. And that is because last week I made a reference to what they were doing, was dredging in the night and stopping two or three o'clock in the morning. So by the time daylight comes around, it looks like nothing really was disturbed.

And what we are doing now is setting the land for public use. I am not saying for the West Indian Company to go ahead. I am saying that what is there right now, because they have created other lands when they

dredge the sand. So that is basically what this amendment seeks to do.

I reserve the rest of the time.

* * * *

[43] SENATOR HODGE: Senator Bryan?

SENATOR BRYAN: I think Senator Stridiron is playing a little game with us here. The land that is right there, if you can see it, you can walk through those sands and get in the water. So I'm saying that that land, if you read Act 4700 and the agreement, makes reference to certain concessions to West Indian Company. The repeal of those acts, in fact, would stop West Indian Company and those involved believing that that land was West Indian Company land. It is not West Indian Company land. So I'm saying while it is the people's land, we rezoning it public for the people. That's all we are saying. We are not saying continue to dredge. They have already started the dredging already. Before there wasn't all that sand there before they started to dredge. So they created some land. So I'm saying that that they created recently, plus what was there previously, is now public. But at the same time we are repealing Acts 4700 and 3326, is in fact saying that the Legislature and the Governor and all involved had no authority to give away the trust lands or the submerged lands.

So we are saying two things. The land belongs to the people, and we are now zoning it public for the people. Am I clear?

* * * *

[48] SENATOR HODGE: All right. Senator Shatkin, you had a question?

SENATOR SHATKIN: Yes, Mr. President. I have a question for counsel. Through the Chair to legal counsel, because there's an issue here which I think is not being raised, which is vitally important. Attorney Sturdivant, my call to the Tax Assessor's Office indicated

that the owner of record of Parcel No. 5 is a Joseph Byers. I don't know who Josepy Byers is. But my question to you is, if this amendment passes, and the designation is changed from W-1 to P, what does that indicate the government has done, and what responsibilities or liabilities does that create for the government?

MS. STRUDIVANT: Well, it would mean that the government has taken private property, and converted it into publicly owned property. It seems to me that it would constitute a taking under the constitution. And as such, the government would have to give some sort of compensation for that taking.

SENATOR BRYAN: Point of order.

SENATOR BROWN: Point of order.

* * * *

[51] SENATOR HODGE: Record Senator Bell's vote as yes.

MS. STEELE: Mr. President, 5 yeas, 8 nays, 2 absent.

SENATOR HODGE: Amendment fails. Senator Brown, No. 378 you wish to offer?

* * * *

REVISED ORGANIC ACT OF 1954, 48 U.S. CODE ANNOTATED § 1541 *et seq.*

BILL OF RIGHTS

§ 3. [Rights and prohibitions]

No law shall be enacted in the Virgin Islands which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

In all criminal prosecutions the accused shall enjoy the right to be represented by counsel for his defense, to be informed of the nature and cause of the accusation, to have a copy thereof, to have a speedy and public trial, to be confronted with the witness against him, and to have compulsory process for obtaining witnesses in his favor.

No person shal be held to answer for a criminal offense without due process of law, and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal cause to give evidence against himself; nor shall any person sit as judge or magistrate in any case in which he has been engaged as attorney or prosecutor.

All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first-degree murder or any capital offense when the proof is evident or the presumption great.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

No law impairing the obligation of contracts shall be enacted.

No person shall be imprisoned or shall suffer forced labor for debt.

All persons shall have the privilege of writ of habeas corpus and the same shall not be suspended except as herein expressly provided.

No ex post facto law or bill of attainder shall be enacted.

Private property shall not be taken for public use except upon payment of just compensation ascertained in the manner provided by law.

The right to be secure against unreasonable searches and seizures shall not be violated.

No warrant for arrest or search shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Slavery shall not exist in the Virgin Islands.

Involuntary servitiude, except as a punishment for crime whereof the party shall have been duly convicted by a court of law, shall not exist in the Virgin Islands.

No law shall be passed abridging the freedom of speech or of the press or the right of the people peaceably to assembly [1] and petition the government for the redress of grievances.

No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates, the overthrow by force or violence of the government of the Virgin Islands or of the United States shall be qualified to hold any office of trust or profit under the government of the Virgin Islands.

No money shall be paid out of the Virgin Islands treasury except in accordance with an Act of Congress

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[1] So in original.

or money bill of the legislature and on warrant drawn by the proper officer.

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of sixteen years in any occupation injurious to health or morals or hazardous to life or limb is prohibited.

Nothing contained in this Act shall be construed to limit the power of the legislature herein provided to enact laws for the protection of life, the public health, or the public safety.

No political or religious test other than an oath to support the Constitution and the laws of the Virgin Islands, shall be required as a qualification to any office or public trust under the Government of the Virgin Islands.—July 22, 1954, ch. 558, § 3, 68 Stat. 497; Aug. 28, 1958, Pub. L. 85-851, § 1, 72 Stat. 1094.

§ 8. [Legislative powers and activities]

[Scope of authority; limitation on enactments and taxation]

(a) The legislative authority and power of the Virgin Islands shall extend to all rightfull subjects of legislation not inconsistent with this Act or the laws of the United States made applicable to the Virgin Islands, but no law shall be enacted which would impair rights existing or arising by virtue of any treaty or international agreement entered into by the United States, nor shall the lands or other property of nonresidents be taxed at a higher rate than the lands or other property of residents.

TITLE 48 U.S. CODE ANNOTED § 1701

GUAM—VIRGIN ISLANDS—AMERICAN SAMOA—SUBMERGED LANDS

PUBLIC LAW 88-183; 77 STAT. 338

[H.R. 2073]

An Act to authorize the Secretary of the Interior to convey certain submerged lands to the governments of Guam, the Virgin Islands, and American Samoa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

(a) Upon the request of the Governor of Guam, the Governor of the Virgin Islands, or the Governor of American Samoa, the Secretary of the Interior is authorized to convey to the government of the territory concerned whatever right, title, or interest the United States has in particular tracts of tidelands, submerged lands, or filled lands in or adjacent to the territory, subject to the limitations contained in this section. The term "tidelands, submerged lands, or filled lands" means for the purposes of this Act all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territory, as heretofore or hereafter modified by accretion, erosion, and reliction, including artificially made, filled-in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters.

(b) No conveyance shall be made pursuant to this section unless the land proposed to be conveyed is clearly required for specific economic development purposes or to satisfy a compelling public need.

(c) No conveyance shall be made pursuant to this section until the expiration of sixty calendar days (exclusive of days on which the House of Representatives or the Senate is not in session because of an adjournment of more than three days to a day certain) from the date on which the Secretary of the Interior submits to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate an explanatory statement indicating the tract proposed to be conveyed and the need therefor, unless prior to the expiration of such sixty calendar days both committees inform the Secretary that they wish to take no action with respect to the proposed conveyance.

(d) Conveyances pursuant to this section shall be subject to such terms and conditions as the Secretary of the Interior may deem appropriate and shall be made without reimbursement or with such reimbursement as he may deem appropriate.

(e) The governments of Guam, the Virgin Islands, and American Samoa shall have proprietary rights of ownership and the rights of management, administration, leasing, use, and the development of the lands conveyed pursuant to this section, but the Secretary of the Interior and such territorial governments shall not have the power or right to convey title to such lands unless the Secretary of the Interior (1) determines that such right to convey is necessary and (2) advises the committee of such determination in the manner described in subsection (c) of this section, and (3) unless the Secretary of the Interior, in proposing to convey such lands to such territorial governments, and such territorial governments in proposing to convey such lands to a third party or third parties pursuant to this section, shall publish notice of such proposed conveyance at least once a week for three weeks in a daily newspaper or newspapers of general circulation in the territory affected by the proposed conveyance. Such published notice shall include the names of all parties to the proposed contract of conveyance, the

purchase price, and a general summary of the boundaries of the tract or tracts proposed to be included in the conveyance.

(f) There shall be excepted from conveyances made pursuant to this section all deposits of oil, gas, and other minerals, but the term "minerals" shall not include sand, gravel, or coral.

Sec. 2. (a) The Secretary of the Interior shall have administrative responsibility for all tidelands, submerged lands, or filled lands in or adjacent to Guam, the Virgin Islands, and American Samoa, except (1) lands conveyed pursuant to section 1 of this Act, (2) lands that are not owned by the United States on the date of enactment of this Act, and (3) lands that are within the administrative responsibility of any other department or agency of the United States on the date of enactment of this Act, for so long as such condition continues. In exercising such authority, the Secretary may grant revocable permits, subject to such terms and conditions as he may deem appropriate, for the use, occupancy, and filling of such lands, and for the removal of sand, gravel, and coral therefrom.

(b) Nothing contained in this section shall affect the authority heretofore conferred upon any department, agency, or officer of the United States with respect to the lands referred to in this section.

Sec. 3. (a) Nothing in this Act shall affect the right of the President to establish naval defensive sea areas and naval airspace reservations around and over the islands of Guam, American Samoa, and the Virgin Islands which he deems necessary for national defense.

(b) Nothing in this Act shall affect the use, development, improvement, or control by or under the constitutional authority of the United States of the lands conveyed pursuant to section 1 of this Act and the navigable waters overlying such lands, for the purposes of navigation or flood control or the production of power, or shall

be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power.

(c) The United States retains all of its navigational servitude and rights in and powers of regulation and control of the lands conveyed pursuant to section 1 of this Act and the navigable waters overlying such lands, for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources not in derogation of United States navigational servitude and rights which are specifically conveyed to the governments of Guam, the Virgin Island, or American Samoa, as the case may be, pursuant to section 1 of this Act.

Sec. 4. (a) Except as otherwise provided in this section, the governments of Guam, the Virgin Islands, and American Samoa, as the case may be, shall have concurrent jurisdiction with the United States over parties found, acts performed, and offenses permitted on property owned, reversed, or controlled by the United States in Guam, the Virgin Islands, and American Samoa. A judgment of conviction or acquittal on the merits under the laws of Guam, the Virgin Islands, or American Samoa shall be a bar to any prosecution under the criminal laws of the United States for the same act or acts, and a judgment of conviction or acquittal on the merits under the laws of the United States shall be a bar to any prosecution under the laws of Guam, the Virgin Islands, or American Samoa for the same act or acts.

(b) Notwithstanding the provisions of subsection (a) of this section, the President may from time to time exclude from the concurrent jurisdiction of the government of Guam persons found, acts performed, and offenses

committed on the property of the United States which is under the control of the Secretary of Defense to such extent and in such circumstances as he finds required in the interest of the national defense.

Approved November 20, 1963.

TITLE 48 U.S. CODE ANNOTED

CHAPTER 15—CONVEYANCE OF SUBMERGED LANDS TO TERRITORIES

Sec.

§§ 1707 to 1703. Repealed. Pub.L. 93-435, § 5, Oct. 5, 1974, 88 Stat. 1212

§ 1704. Concurrent jurisdiction; exceptions for national defense purposes

(a) Except as otherwise provided by law, the governments of the Virgin Islands, Guam, and American Samoa, shall have concurrent civil and criminal jurisdiction with the United States with regard to property owned, reserved, or controlled by the United States in the Virgin Islands, Guam, and American Samoa respectively. A judgment of conviction or acquittal on the merits under the laws of Guam, the Virgin Islands, or American Samoa shall be a bar to any prosecution under the criminal laws of the United States for the same act or acts, and a judgment of conviction or acquittal on the merits under the laws of the United States shall be a bar to any prosecution under the laws of Guam, the Virgin Islands, or American Samoa for the same act or acts.

(b) Notwithstanding the provisions of subsection (a) of this section, the President may from time to time exclude from the concurrent jurisdiction of the government of Guam persons found, acts performed, and offense scommitted on the property of the United States which is under the control of the Secretary of Defense to such extent and in such circumstances as he finds required in the interest of the national defense.

Pub.L. 88-183, § 4, Nov. 20, 1963, 77 Stat. 339; Pub.L. 99-396, § 3, Aug. 27, 1986, 100 Stat. 839.)

§ 1705. Tidelands, submerged lands, or filled lands

(a) Conveyance to Guam, Virgin Islands, and American American Samoa

Subject to valid existing rights, all right, title, and interest of the United States in lands permanently or

periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territories of Guam, the Virgin Islands, and American Samoa, as heretofore or hereafter modified by accretion, erosion, and reliction, and in artificially made, filled in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters, are hereby conveyed to the governments of Guam, the Virgin Islands, and American Samoa, as the case may be, to be administered in trust for the benefit of the people thereof.

(b) Retention of certain lands and mineral rights by United States

There are excepted from the transfer made by subsection (a) hereof—

(i) all deposits of oil, gas, and other minerals, but the term "minerals" shall not include coral, sand, and gravel;

(ii) all submerged lands adjacent to property owned by the United States above the line of mean high tide;

(iii) all submerged lands adjacent to property above the line of mean high tide acquired by the United States by eminent domain proceedings, purchase, exchange, or gift, after October 5, 1974, as required for completition of the Department of Navy Land Acquitions Project relative to the construction of the ammunition Pier authorized by the Military Construction Authorization Act, 1971 (84 Stat. 1204), as amended by section 201 of the Military Construction Act, 1973 (86 Stat. 1135);

(iv) all submerged lands filled in, built up, or otherwise reclaimed by the United States, before October 5, 1974, for its own use;

(v) all tracts or parcels of submerged land containing on any part thereof any structures or improvements constructed by the United States;

(vi) all submerged lands that have heretofore been determined by the President or the Congress to be of such scientific, or historic character as to warrant preservation and administration under the provisions of sections 1 and 2 to 4 of Title 16;

(vii) all submerged lands designated by the President within one hundred and twenty days after October 5, 1974;

(viii) all submerged lands that are within the administrative responsibility of any agency or department of the United States other than the Department of the Interior;

(ix) all submerged lands lawfully acquired by persons other than the United States through purchase, gift, exchange, or otherwise;

(x) all submerged lands within the Virgin Islands National Park established by sections 398 to 398b of Title 16, including the lands described in sections 398c and 398d of Title 16; and

(xi) all submerged lands within the Buck Island Reef National Monument as described in Presidential Proclamation 3448 dated December 28, 1961.

Upon request of the Governor of Guam, the Virgin Islands, or American Samoa, the Secretary of the Interior may, with or without reimbursement, and subject to the procedure specified in subsection (c) of this section convey all right, title, and interest of the United States in any of the lands described in clauses (ii), (iii), (iv), (v), (vi), (vii), or (viii) of this subsection to the government of Guam, the Virgin Islands, or American Samoa, as the case may be, with the concurrence of the agency having custody thereof.

(c) Submittal to Congressional Committees of proposals for conveyance of retained lands or rights

No conveyance shall be made by the Secretary pursuant to subsection (a) or (b) of this section until the expira-

tion of sixty calendar days (excluding days on which the House of Representatives or the Senate is not in session because of an adjournment of more than three days to a day certain) from the date on which the Secretary of the Interior submits to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate an explanatory statement indicating the tract proposed to be conveyed and the need therefor, unless prior to the expiration of such sixty calendar days both committees inform the Secretary that they wish to take no action with respect to the proposed conveyance.

(d) Oil, gas, and other mineral deposits in submerged lands conveyed to Guam, Virgin Islands, and American Samoa; conveyance by United States; existing leases, permits, etc.

(1) The Secretary of the Interior shall, not later than sixty days after March 12, 1980, convey to the governments of Guam, the Virgin Islands, and American Samoa, as the case may be, all right, title, and interest of the United States in deposits of oil, gas, and other minerals in the submerged lands conveyed to the government of such territory by subsection (a) of this section.

(2) The conveyance of mineral deposits under paragraph (1) of this subsection shall be subject to any existing lease, permit, or other interest granted by the United States prior to the date of such conveyance. All rentals, royalties, or fees which acrue after such date of conveyance in connection with any such lease, permit, or other interest shall be payable to the government of the territory to which such mineral deposits are conveyed.

(Pub.L. 93-435, § 1, Oct. 5, 1974, 88 Stat. 1210; Pub.L. 96-205, Title VI, § 607, Mar. 12, 1980, 94 Stat. 91.)

§ 1707. Payment of rents, royalties, and fees to local government

On and after October 5, 1974, all rents, royalties, or fees from leases, permits or use rights, issued prior to October 5, 1974, by the United States with respect to the land conveyed by this Act, or by the amendment made by this Act, and rights of action for damages for trespass occupancies of such lands shall accrue and belong to the appropriate local government under whose jurisdiction the land is located.

(Pub.L. 93-435, § 4, Oct. 5, 1974, 88 Stat. 1212.)

§ 1708. Discrimination prohibited in rights of access to, and benefits from, conveyed lands

No person shall be denied access to, or any of the benefits accruing from, the lands conveyed by this Act, or by the amendment made by this Act, on the basis of race, religion, creed, color, sex, national origin, or ancestry: *Provided, however,* That this section shall not be construed in derogation of any of the provisions of the April 17, 1900 cession of Tutuila and Aunuu or the July 16, 1904 cession of the Manu's Islands, as ratified by the Act of February 20, 1929 (45 Stat. 1253) and the Act of May 22, 1929 (46 Stat. 4).

(Pub.L. 93-435, § 6, Oct. 5, 1974, 88 Stat. 1212.)

THE WEST INDIAN COMPANY LIMITED

March 16, 1979

G.P.O. Box 7660
Charlotte Amalie
St. Thomas
U.S. Virgin Islands 00801
Telephone: (809) 774-1780

The Honorable Juan Luis
Governor
Government of the Virgin Islands
St. Thomas, Virgin Islands

Dear Governor Luis:

I enclose for your information a statement of our position relative to the Coastal Zone Management Act enacted in December 1978, as it relates to the Memorandum of Understanding of October 1973, between the Government of the Virgin Islands, the U.S. Department of the Interior, the West Indian Company, Ltd., Major Byers' Investment Associates and Caribbean Harbor Club, Inc.

We have taken the liberty of sending a copy of these documents to Commissioner Darlan Brin and to the Legislature.

We shall be pleased to meet with you to further consider this matter.

Respectfully,

/s/ Klavs R. Thomsen
KLAVS R. THOMSEN
President

Enc.

THE WEST INDIAN COMPANY LIMITED

March 16, 1979

G.P.O. Box 7660
Charlotte Amalie
St. Thomas
U.S. Virgin Islands 00801
Telephone: (809) 774-1780

The Honorable Elmo D. Roebuck
Senate President
Legislature of the Virgin Islands
St. Thomas, Virgin Islands

Dear Senator Roebuck:

I enclose for your information a statement of our position relative to the Coastal Zone Management Act enacted in December 1978, as it relates to the Memorandum of Understanding of October 1973, between the Government of the Virgin Islands, the U.S. Department of the Interior, The West Indian Company, Ltd., Major Byers' Investment Associates and Caribbean Harbor Club, Inc.

We have taken the liberty of sending a copy of these documents to each senator as well as to Commissioner Darlan Brin.

We shall be pleased to meet with you to further consider this matter.

Respectfully,

/s/ Klavs R. Thomsen
KLAVS R. THOMSEN
President

Enc.

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THE WEST INDIAN COMPANY LIMITED,
Plaintiff

-vs-

THE GOVERNMENT OF THE VIRGIN ISLANDS,
Defendant

COMPLAINT

Plaintiff, by its attorneys, alleges on information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff (hereinafter "WICO") is a corporation organized and existing under the laws of the Virgin Islands.

2. Defendant (the "Government") is the Government of the Virgin Islands.

3. In 1913, the Government of Denmark granted to WICO substantial rights to reclaim and fill submerged lands in St. Thomas Harbor.

4. The reclaiming rights of WICO were specifically guaranteed in the 1917 Treaty between the United States and Denmark relating to the acquisition of the Virgin Islands.

5. In 1968 the United States commenced an action captioned "United States of America v. The West Indian Company Limited, et al.," Civil No. 337/1968, District Court of the Virgin Islands, Division of St. Thomas and St. John, seeking a determination that the reclaiming

rights granted to WICO by the Danish Government had terminated.

6. Settlement negotiations were undertaken, in the course of which WICO made a formal written settlement proposal to the Governor of the Virgin Islands, which proposal was the subject of extensive review by various departments and agencies of the Government of the Virgin Islands, and was also the subject of a public hearing ordered by the Governor of the Virgin Islands.

7. On October 11, 1972 the Legislature of the Virgin Islands enacted Act No. 3326, Ninth Legislature of the Virgin Islands of the United States, Fourth Session, 1972, which was approved by the Governor of the Virgin Islands on October 30, 1972, and which provides in full as follows:

> "WHEREAS the United States has instituted an action in the District Court of the Virgin Islands, captioned 'United States of America vs The West Indian Company, et al., Civil No. 337—1968 To Quiet Title'; and
>
> WHEREAS there has been an offer of settlement and compromise put forward by the West Indian Company; and
>
> WHEREAS the offer of settlement and compromise has been the subject of extensive study, investigation and consideration by the Government of the Virgin Islands, acting through the Legislature and the Governor; and
>
> WHEREAS it appears that the offer of settlement and compromise is in the public interest; and
>
> WHEREAS the District Court Judge has recommended consideration of the settlement offer by the Governor and Legislature of the Virgin Islands; Now, Therefore,

BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. The Governor of the Virgin Islands in behalf of the Government of the Virgin Islands shall recommend to the United States Department of Interior and the United States Department of Justice the acceptance and implementation of an offer of settlement and compromise substantially in the form presented by The West Indian Company in *Statement of The West Indian Company re Proposal for Reclaiming Part of Long Bay Under Its Danish Concession*, dated October 26, 1971, as modified by letter from The West Indian Company to Governor Melvin H. Evans, dated November 2, 1971; provided that the West Indian Company will deed to the Government of the Virgin Islands a waterfront highway in front of its proposed development at Frederiksberg Point, in the event such development is undertaken and completed; and provided further that the West Indian Company shall stipulate the period of time within which such Frederiksberg Point development will be undertaken.

Thus passed by the Legislature of the Virgin Islands on October 11, 1972."

Said Act No. 3326 was approved by the Governor of the Virgin Islands on October 30, 1972.

8. Thereafter, a Memorandum of Understanding dated as of the 3rd day of October, 1973 was executed by the United States Department of Interior, the Government of the Virgin Islands, WICO and the other parties to the action referred to in paragraph 5 hereof. (A copy of said Memorandum of Understanding is annexed hereto as Exhibit A and incorporated herein as if set forth in full.)

9. A First Addendum to the Memorandum of Understanding was made and executed as of the 28th day of

October, 1975 between United States Department of Interior, the Government of the Virgin Islands, WICO and the other parties. (A copy of said First Addendum is annexed hereto as Exhibit B and incorporated herein as if set forth in full.) Among other things, the First Addendum provided for the transfer to the Government of the Virgin Islands of the rights and responsibilities of the Government of the United States under the Memorandum of Understanding.

10. The Memorandum of Understanding, as amended, requires the Government of the Virgin Islands to convey to WICO all of the Government's right, title and interest in certain areas to be reclaimed by WICO, therein designated as Areas IV, V, VI and VII. The Government reserved the right to acquire the lands or rights of WICO which are subject to the agreement by eminent domain or condemnation, but not otherwise.

11. The Government enacted Act No. 4248, Twelfth Legislature of the Virgin Islands of the United States, passed by the Legislature of the Virgin Islands on October 12, 1978 and approved by the Governor of the Virgin Islands on October 31, 1978 (the "Virgin Islands Coastal Zone Management Act of 1978").

12. The Virgin Islands Coastal Zone Management Act of 1978, and particularly Section 910 thereof, forbids the conveyance of title to submerged lands (permitting only occupancy permits or leases for a maximum of 20 years, for a rental fee), and purports to impose rigorous use restrictions and other conditions, all of which are contrary to the terms and intention of the Memorandum of Understanding, as amended, and would prevent the conveyance to WICO by the Government of the submerged lands in Areas IV, V, VI and VII, as required by the Memorandum of Understanding, as amended.

13. The actions of the Government alleged in paragraphs 11 and 12 constitute a material breach by the

Government of the Virgin Islands of the Memorandum of Understanding, as amended.

14. The value of the rights and interests of WICO under the Memorandum of Understanding, as amended, is in excess of $5,000,000, and WICO has suffered damages in excess of $5,000,000 by reason of such material breach of contract by the Government.

AS AND FOR A SECOND CAUSE OF ACTION

15. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 12.

16. Said actions on the part of the Government constitute a taking of property without compensation and are in violation of the Fifth Amendment to the Constitution of the United States and of § 3 of the Revised Organic Act of 1954, as amended.

RELIEF REQUESTED

17. As and for its damages in respect of the First Cause of Action, plaintiff is entitled to damages in a sum in excess of $5,000,000, with interest.

18. With respect to the Second Cause of Action, plaintiff is entitled to judgment declaring the Coastal Zone Management Act to be unconstitutional, unlawful and void.

WHEREFORE, etc.

[Gov't Logo]

GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES

Department of Conservation and Cultural Affairs

P.O. Box 4340

Charlotte Amalie, St. Thomas

NOTICE OF VIOLATION AND ORDER TO CEASE AND DESIST

Date: August 18, 1986

Case: _____

CERTIFIED MAIL OR HAND DELIVERY

_____

_____

Mr. Hans F. Jahn, President
West Indian Company, Ltd.
G.P.O. Box 7660
St. Thomas, Virgin Islands

Coastal Zone Permit
CZT-89-83W

Dear Mr. Jahn:

It has been reported that you are responsible for the continued work pursuant to CZT-89-83W in violation of Bill No. 16-0607, dated August 11, 1986 which requires the Governor's approval and the Legislature's ratification located on the submerged lands of Long Bay on St. Thomas, U.S. Virgin Islands.

This is to notify you that the above referenced action is in violation of Bill No. 16-0607 and Chapter 21 of Title 12, Virgin Islands Code.

You are hereby ordered to immediately cease and desist from any further action resulting in a violation. The following corrective action is to be taken: Meet with the Director of CZM to determine the extent of further work

necessary in order to protect the environment and perform such work strictly under his guidance; and comply with Bill No. 16-0607.

/s/ Angel Luis Lebron
Commissioner

Received by: /s/ [Illegible]

Firm: [Illegible]

Date: [Illegible]

cc: Asst. Attorney General, DCCA
Deputy District Engineer, Corps of Engineers, San Juan
Director, CZM
Chief of Enforcement

COASTAL ZONE MANAGEMENT ACT
TITLE 12 V.I. CODE

Chapter 21. Virgin Islands Coastal Zone Management

Section Analysis

§ 901. Common name

This chapter shall be known and may be cited as the Virgin Islands Coastal Zone Management Act of 1978.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 282.

§ 902. Definitions

For the purposes of this chapter, and unless the context otherwise requires:

(a) "Aggrieved person" means any person, including the applicant, who, in connection with a decision or action of the Commission on an application for a major

coastal zone permit either appeared in person or through representatives at a public hearing of the Commission on said application, or prior to said decision or action informed the Commission in writing of the nature of his concern, or on an application for a minor coastal zone permit informed the Commissioner in writing prior to said decision or action of the nature of his concern, or who for good cause was unable to do any of the foregoing.

(b) "Areas of particular concern" means areas in the coastal zone that require special and more detailed planning analyses and the preparation of special plans and implementation mechanism.

(c) "Board" means the Board of Land Use Appeals established in Title 29, chapter 3 of this Code.

(d) "Coastal dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function effectively.

(e) "Coastal Land and Water Use Plan" means the comprehensive plan for the development of the first tier of the coastal zone which is intended to serve as a policy guide for decision-making relative to development activities within this tier.

(f) "Coastal waters" means sea, as that term is defined in subsection (x) herein, as well as those waters adjacent to the shorelines which contain a measurable quantity or percentage of seawater, including, but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

(g) "Coastal zone" means all land and water areas of the Territory of the Virgin Islands extending to the outer limits of the territorial sea, specified on the maps identified in section 908, subsection (a) of this chapter, and is composed of two parts, a first tier and a second tier.

(h) "Coastal Zone Management Program" means the program prepared by the Virgin Islands Planning Office

for the management of the Coastal Zone of the Virgin Islands and submitted by the Governor of the Virgin Islands to the U.S. Department of Commerce pursuant to section 306, subsection (c), paragraph 4 of the Federal Coastal Zone Management Act of 1972 (P.L. 92-583).

(i) "Coastal zone permit" means a permit for any development within the first tier of the coastal zone that is required pursuant to section 906 of this chapter.

(j) "Commission" means the Coastal Zone Management Commission as created by section 904 of this chapter.

(k) "Commissioner" means the Commissioner of Conservation and Culutral Affairs.

(l) "Development" means the placement, erection, or removal of any fill, solid material or structure on land, in or under the water; discharge or disposal of any dredged material or of any liquid or solid waste; grading, removing, dredging, mining, or extraction of any materials, including mineral resources; subdivision of land pursuant to Title 29, chapter 3 of this Code; construction, reconstruction, removal, demolition or alteration of the size of any structure; or removal or harvesting of vegetation, including coral. Development shall not be defined or interpreted to include activities related to or undertaken in conjunction with the cultivation, use or subdivision of land for agricultural purposes which do not disturb the coastal waters or sea, or any improvement made in the interior of any structure.

(m) "Emergency" means an unexpected situation that poses an immediate danger to life, health or property and demands immediate action to prevent or mitigate loss or damage to life, health, property or essential public services.

(n) "Environment" means the physical, social and economic conditions which exist within the area which will be affected by a proposed project.

(o) "Environmental Assessment Report" means an informational report prepared by the permittee available to public agencies and the public in general which, when required by this chapter, shall be considered by the Commission prior to its approval or disapproval of an application for a major coastal zone permit. Such report shall include detailed information about the existing environment in the area of a proposed development, and about the effects which a proposed development is likely to have on the environment; an analysis and description of ways in which the significant adverse effects of such development might be mitigated and minimized; and an identification and analysis of reasonable alternatives to such development.

(p) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

(q) "Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

(r) "First tier" means that area extending landward from the outer limit of the territorial sea, including all offshore islands and cays, to distances inland as specified in the maps incorporated by reference in section 908, subsection (a) of this chapter.

(s) "Major coastal zone permit" means a permit required for development within the coastal zone, which development is not "minor development" as defined in section 910, subsection (c) of this chapter.

(t) "Minor coastal zone permit" means the permit required for development defined in section 910, subsection (c) of this chapter.

(u) "Permit" means any license, certificate, approval, or other entitlement for use granted or denied by any public agency.

(v) "Person" means any individual, organization, partnership, association, corporation or other entity, including any utility, the Government of the Virgin Islands, the Government of the United States, any department, agency, board, authority or commission of such governments, including specifically the Virgin Islands Port Authority and the Virgin Islands Water and Power Authority, and any officer or governing or managing body of any of the foregoing.

(w) "Public Agency" means Government of the United States, the Government of the Virgin Islands or any department, agency, specifically the Virgin Islands Port Authority and the Virgin Islands Water and Power Authority, and any officer or governing or managing body of any of the foregoing.

(x) "Sea" means the Atlantic Ocean, the Caribbean Sea and all coastal waters including harbors, bays, coves, channels, estuaries, salt ponds, marshes, sloughs and other areas subject to tidal action through any connection with the Atlantic Ocean or the Caribbean Sea, excluding streams, tributaries, creeks and flood control and drainage channels.

(y) "Second tier" means the interior portions of the Islands of St. Thomas, St. John and St. Croix, including all watersheds and adjacent land areas not included in the first tier.

(z) "Shorelines" means the area along the coastline of the Virgin Islands from the seaward line of low tide, running inland a distance of fifty feet, or to the extreme seaward boundary of natural vegetation which spreads continuously inland, or to a natural barrier, whichever is the shortest distance. Whenever the shore is extended into the sea by or as a result of filling, dredging or other man-made alteration activities, the landward boundary of the shorelines shall remain at the line previously established.

(aa) "Significant natural area" means land and/or water areas within the coastal zone of major environmental value, including fish or wildlife habitat areas, valuable biological or natural productivity areas; and unique or fragile coastal ecological units or ecosystems which require special treatment and protection.

(bb) "Structure" means anything constructed or erected which requires location or placement on or in the ground, the submerged land, or coastal waters, or which is attached to something located in or on the ground, the submerged lands, or coastal waters.

(cc) "Submerged and filled lands" means all lands in the Virgin Islands permanently or periodically covered by tidal waters up to, but not above, the line of mean high tide, seaward to a line three geographical miles distant from the coastline of the Virgin Islands, and all artificially made, filled in, or reclaimed lands, salt ponds and marshes which were formerly permanently or periodically covered by tidal waters.

(dd) "Trust lands" means all submerged and filled land conveyed pursuant to Public Law 93-435, 88 Statutes 1210, by the United States to the Government of the Virgin Islands to be administered in trust for the benefit of the people of the Virgin Islands.

(ee) "Vested rights" means the rights obtained by a person to complete development without having to obtain a coastal zone permit where, prior to the effective date of this chapter, such person has obtained the necessary permit or permits, issued by the appropriate public agency(ies), which would have been sufficient to legally authorize such development prior to said effective date.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 282.

§ 903. Findings and goals

(a) The Legislature hereby finds and declares that:

(1) the coastal zone, and the lands and waters thereof, constitute a distinct and valuable natural resource of vital importance to the people and economy of the Virgin Islands;

(2) the protection of the natural and scenic resources of the coastal zone is of vital concern to present and future residents of the Virgin Islands;

(3) title to certain submerged and filled lands surrounding the Virgin Islands has been conveyed in trust to and is held in trust by the Government of the Virgin Islands for the benefit of the people of the Virgin Islands;

(4) the shorelines provide a constant source of food and recreation to, and enhance all aspects of the lives of, the people of the Virgin Islands, and the public has made frequent uninterrupted and unobstructed use of the shorelines throughout Danish and American sovereignty;

(5) to promote the public safety, health and welfare, and to protect public and private property, wildlife, ocean resources and the natural environment, it is necessary to preserve the ecological balance of the coastal zone, and to prevent its deterioration and destruction;

(6) there has been uncontrolled and uncoordinated development of the shorelines and attempts to curtail the use of the shorelines by the public;

(7) improper development of the coastal zone and its resources has resulted in land use conflicts, erosion, sediment deposition, increased flooding, gut and drainage fillings, decline in productivity of the marine environment, pollution and other adverse environmental effects in and to the lands and waters of the coastal zone, and has adversely affected the beneficial uses of the coastal zone by the people of the Virgin Islands;

(8) the present system of regulatory controls in the Virgin Islands affecting the coastal zone consists of frag-

mented or overlapping laws and regulations which are not properly coordinated and which when taken together do not constitute a comprehensive or adequate response to the needs of the people of the Virgin Islands to protect, and to effect the best use of, the resources of the coastal zone; and

(9) there exists no comprehensive program for the overall management, conservation and development of the resources of the coastal zone, for the prevention of encroachment on natural areas in the coastal zone by urbanized developments and for the avoidance of irreversible commitments of coastal zone resources which provide short-terms benefits at the cost of adverse effects on the long-term productivity and amenity of the coastal zone environment.

(b) The Legislature hereby determines that the basic goals of the Virgin Islands for its coastal zone are to:

(1) protect, maintain, preserve and, where feasible, enhance and restore, the overall quality of the environment in the coastal zone, the natural and man-made resources therein, and the scenic and historic resources of the coastal zone for the benefit of residents of and visitors of the Virgin Islands;

(2) promote economic development and growth in the coastal zone and consider the need for development of greater than territorial concern by managing: (1) the impacts of human activity and (2) the use and development of renewable and nonrenewable resources so as to maintain and enhance the long-term productivity of the coastal environment;

(3) assure priority for coastal-dependent development over other development in the coastal zone by reserving areas suitable for commercial uses including hotels and related facilities, industrial uses including port and marine facilities, and recreation uses;

(4) assure the orderly, balanced utilization and conservation of the resources of the coastal zone, taking into account the social and economic needs of the residents of the Virgin Islands;

(5) preserve, protect and maintain the trust lands and other submerged and filled lands of the Virgin Islands so as to promote the general welfare of the people of the Virgin Islands;

(6) preserve what has been a tradition and protect what has become a right of the public by insuring that the public, individually and collectively, has and shall continue to have the right to use and enjoy the shorelines and to maximize public access to and along the shorelines consistent with constitutionally-protected rights of private property owners;

(7) promote and provide affordable and diverse public recreational opportunities in the coastal zone for all residents of the Virgin Islands through acquisition, development and restoration of areas consistent with sound resource conservation principles;

(8) conserve ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the function and integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas:

(9) maintain or increase coastal water quality through control of erosion, sedimentation, runoff, siltation and sewage discharge;

(10) consolidate the existing regulatory controls applicable to uses of land and water in the coastal zone into a single unified process consistent with the provisions of this chapter, and coordinate therewith the various regulatory requirements of the United States Government;

(11) promote public participation in decisions affecting coastal planning conservation and development.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 286.

§ 904. Coastal Zone Management Commission

(a) There is hereby created within the Department of Conservation and Cultural Affairs a Coastal Zone Management Commission composed of the Commissioner of Conservation and Cultural Affairs, who shall be a non-voting member, ex officio, the Director of the Virgin Islands Planning Office who shall be a non-voting member, ex officio, and fifteen other members appointed by the Governor with the advice and consent of the Legislature. Of the fifteen appointed members, five shall reside on St. Croix, five shall reside on St. Thomas and five shall reside on St. John. Ex officio members of the Commission may appoint a designee to serve at his or her pleasure who shall have all the powers and duties of such member pursuant to this chapter. The Commission shall elect a Chairman from among its members. Eight voting members of the Commission shall constitute a quorum for the transaction of all business of the Commission. A majority of those voting members present shall decide on all matters before the Commission. The Commission may adopt such other rules as it deems necessary to conduct its business.

(b) There are created within the Coastal Zone Management Commission three Commission Committees: one of such Committees shall consist of the members who reside on St. Croix, one of such Committees shall consist of the members who reside on St. Thomas and one of such Committees shall consist of members who reside on St. John. Each Committee shall exercise the full authority of the Commission over the issuance of Coastal Zone Permits within the jurisdiction of the Commission pertaining solely to the respective resident island of the Committee. Each Committee shall elect a Chairman from its members. A quorum of each Coastal Zone Manage-

ment Committee shall consist of three of its members. A majority of those present shall decide on all matters before a Commission Committee.

(c) Appointed members of the Commission shall serve a term of two years and may be reappointed. Upon the conclusion of the term of any appointed member of the Commission, such person shall continue to serve until a new member has been appointed. The appointed members of the Commission shall receive the sum of $30 for each day or part thereof spent in the performance of their duties. Every member of the Commission shall be reimbursed for necessary travel, subsistence and other expenses actually incurred in the discharge of his duties as a member of the Commission. Appointed members of the Commission may be removed by the Governor for cause.

(d) In addition to all powers specifically assigned the Commission by this chapter, the Commission shall have the primary responsibility for the implementation of the provisions of this chapter. The Department of Conservation and Cultural Affairs as directed by the Commission is hereby designated as the territorial coastal zone management agency for the purpose of exercising powers set forth in the Federal Coastal Zone Management Act of 1972 or any amendment thereto or any other federal act heretofore or hereafter enacted that relates to the managment of the coastal zone except for those activities or programs presently being carried out by any other agency of the Government of the Virgin Islands or which the Governor may assign to any other agency. In addition to other authority, the Commission may grant or issue any certificate or statement required pursuant to any federal law that an activity of any person is in conformity with the provisions of this chapter.

(e) The Commission shall prepare and submit to the Legislature of the Virgin Islands for adoption any additional plans and undertake any studies it deems neces-

sary and appropriate to better accomplish the purposes, goals and policies of this chapter.

(f) The Commission shall evaluate progress being made towards the implementation of the provisions of this chapter and shall submit a report to the Governor and Legislature on an annual basis.

(g) The Commission shall promulgate rules and regulations necessary to carry out the provisions of this chapter; Provided, however, That no such rules or regulations shall be promulgated unless public hearings are held by the Commission after appropriate notice as hereinafter provided. Any rules and regulations promulgated pursuant to this chapter may be modified, amended or revised by the Legislature in accordance with the provisions of subsection (b), section 913, Title 3 of this Code.

(h) *Division of Coastal Zone Management.* There is heerby established within the Department of Conservation and Cultural Affairs a Division of Coastal Zone Management, the powers and duties of which are, without limitation, to assist the Commission and Commissioner in administering and enforcing the provisions of this chapter.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 289.

§ 905. General provisions

(a) Nothing in this chapter shall be construed as amending or altering in any way the existing zoning designations of lands within the Virgin Islands or the Zoning District Maps adopted pursuant to Title 29, chapter 3, of this Code.

(b) Every use permitted under an existing zoning designation of lands pursuant to sections 227 and 228. Title 29, chapter 3, of this Code shall be permitted provided the use is consistent with the provisions of sections 903, 906 and 910 of this chapter.

(c) Any proposed use for which a coastal zone permit is required but not permitted pursuant to sections 227 and 228, Title 29, chapter 3, of this Code, and is consistent with the applicable zoning district and goals and policies of this chapter may be approved by the authority responsible for issuing such permits.

(d) This chapter is not intended, and shall not be construed as authorizing the Commission, Commissioner or any public agency acting pursuant to this chapter to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use without the payment of just compensation therefor. This chapter is not intended to increase or decrease the rights of any owner of property under the Revised Organic Act of the Virgin Islands or Constitution of the United States.

(e) In carrying out the provisions of this chapter, conflicts between the policies of this chapter shall be resolved in the manner which is the most protective of significant coastal resources.

(f) No provision of this chapter is a limitation on any of the following:

(1) except as otherwise specifically limited by territorial or federal law, on the power of any public agency to adopt and enforce additional regulations, not in conflict with this chapter, imposing further conditions or restrictions on land or water uses or other activities which might adversely affect coastal zone resources;

(2) on the power of the Government of the Virgin Islands to declare, prohibit and abate nuisances or to bring an action in the name of the people of the Virgin Islands to enjoin any waste or the pollution of resources of the coastal zone; and

(3) on the right of any person to maintain an appropriate action for relief against a private nuisance or for any other private relief.

(g) Nothing herein contained shall be construed to abridge or alter vested rights obtained in a development in the first tier coastal zone prior to the effective date of this chapter or any occupancy permit or lease of trust lands or other submerged or filled lands issued prior to the effective date of this chapter, except to the extent provided in said occupancy permit or lease.

(h) No person who has obtained all necessary and required permits to construct or undertake development in the coastal zone and who, prior to the effective date of this chapter, has commenced construction of such development in good faith, shall be required to secure approvals for such development pursuant to this chapter; Provided, however, That notwithstanding subsections (g) and (h) of this section, no substantial change may be made in any such development without prior approval having been obtained in accordance with the provisions of this chapter.

(i) Nothing herein contained shall be construed to repeal, alter, abrogate, annul or in any way limit, diminish, impair or interfere with any of the following, but shall be held and construed as auxilliary and supplementary thereto:

(1) any easements, covenants or other agreements between parties to the extent that such easements, covenants, or agreements impose greater restrictions upon the use or alteration of land or water in the coastal zone than the requirements of this chapter;

(2) any or all rights the public has acquired by whatever means to use, traverse, enjoy or occupy lands or waters or both in the coastal zone as of the effective date of this chapter by reason of express or implied dedication or otherwise;

(3) the Commissioner's authority to administer and enforce any other provision of law related to, involving or affecting the coastal zone; and

(4) any laws of the Virgin Islands relating to air or water quality, air or water pollution, oil spill prevention or earth change.

(j) All public agencies of the Government of the Virgin Islands shall cooperate with the Commission, its Committees, and Commissioner in the administration and the enforcement of this chapter. All public agencies of the Government of the Virgin Islands currently exercising regulatory authority in the coastal zone shall administer such authority consistent with the provisions of this chapter and the rules and regulations promulgated hereunder.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 291.

§ 906. Specific policies applicable to the first tier of the coastal zone

Consistent with the basic goals set forth in section 903(b) of this chapter, and except as may otherwise be specifically provided in this chapter, the policies set forth in this section shall apply to all proposed developments in the first tier of the coastal zone, and no such development shall be approved which is inconsistent with such goals and policies.

(a) Development policies in the first tier shall be as follows:

(1) to guide new development to the maximum extent feasible into locations with, contiguous with, or in close proximity to existing developed sites and into areas with adequate public services and to allow well-planned, self-sufficient development in other suitable areas where it will have no significant adverse effects, individually or cumulative, on coastal zone resources;

(2) to give highest priority to water dependent uses, particularly in those areas suitable for commercial uses including resort hotels and related facilities, industrial uses including port and marine facilities, and recreation;

to give secondary priority to those uses that are water-related or have special siting needs; and to discourage uses which are neither water-dependent, water-related nor have special siting needs in areas suitable for the highest and secondary priority uses;

(3) to assure that new or expanded public capital improvement projects will be designed to accommodate those needs generated by development or uses permitted consistent with the Coastal Land and Water Use Plan and provisions of this chapter;

(4) to assure that all new subdivisions, in addition to the other requirements contained in this chapter and in the Virgin Islands Zoning and Subdivision Law, are physically suitable for the proposed sites and are designed and improved so as to avoid causing environmental damage or problems of public health.

(5) to encourage waterfront redevelopment and renewal in developed harbors in order to preserve and improve physical and visual access to the waterfront from residential neighborhoods and commercial downtown areas;

(6) to assure that development will be cited and designed to protect views to and along the sea and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas;

(7) to encourage fishing and carefully monitor mariculture and, to the maximum extent feasible, to protect local fishing activities from encroachment by non-related development;

(8) to assure that dredging or filling of submerged lands is clearly in the public interest; and to ensure that such proposals are consistent with specific marine environment policies contained in this chapter. To these ends, the diking, filling or dredging of coastal waters,

salt ponds, lagoons, marshes or estuaries may be permitted in accordance with other applicable provisions of this chapter only where there are no feasible, less environmentally-damaging alternatives and, where feasible, mitigation measures have been provided to minimize adverse environmental effects, and in any event shall be limited to the following: (i) maintenance dredging required for existing navigational channels, vessel berthing and mooring areas; (ii) incidental public service purposes, including but not limited to the burying of cables and pipes, the inspection of piers and the maintenance of existing intake and outfall lines; (iii) new or expanded port, oil, gas and water transportation, and coastal dependent industrial uses, including commercial fishing facilities, cruise ship facilities, and boating facilities and marinas; (iv) except as restricted by federal law, mineral extraction, including sand, provided that such extraction shall be prohibited in significant natural areas; and (v) restoration purposes;

(9) to the extent feasible, discourage further growth and development in flood-prone areas and assure that development in these areas is so designed as to minimize risks to life and property;

(10) to comply with all other applicable laws, rules, regulations, standards and criteria of public agencies.

(b) Environmental policies in the first tier shall be as follows:

(1) to conserve significant natural areas for their contributions to marine productivity and value as habitats for endangered species and other wildlife;

(2) to protect complexes of marine resource systems of unique productivity, including reefs, marine meadows, salt ponds, mangroves and other natural systems, and assure that activities in or adjacent to such complexes are designed and carried out so as to minimize adverse

effects on marine productivity, habitat value, storm buffering capabilities, and water quality of the entire complex;

(3) to consider use impacts on marine life and adjacent and related coastal environment;

(4) to assure that siting criteria, performance standards, and activity regulations are stringently enforced and upgraded to reflect advances in related technology and knowledge of adverse effects on marine productivity and public health;

(5) to assure that existing water quality standards for all point source discharge activities are stringently enforced and that the standards are continually upgraded to achieve the highest possible conformance with federally-promulgated water quality criteria;

(6) to preserve and protect the environments of offshore islands and cays;

(7) to accommodate offshore sand and gravel mining needs in areas and in ways that will not adversely affect marine resources and navigation. To this end, sand, rock, mineral, marine growth and coral (including black coral), natural materials, or other natural products of the sea, excepting fish and wildlife, shall not be taken from the shorelines without first obtaining a coastal zone permit, and no permit shall be granted unless it is established that such materials or products are not otherwise obtainable at reasonable cost, and that the removal of such materials or products will not significantly alter the physical characteristics of the area or adjacent areas on an immediate or long-term basis; or unless the Commission has determined that a surplus of such materials or products exists at specifically designated locations;

(8) to assure the dredging and disposal of dredged material will cause minimal adverse effects to marine and wildlife habitats and water circulation;

(9) to assure that development in areas adjacent to environmentally-sensitive habitat areas, especially those of endangered species, significant natural areas, and parks and recreations area, is sited and designed to prevent impacts which would significantly degrade such areas;

(10) to assure all of the foregoing, development must be designed so that adverse impacts on marine productivity, habitat value, storm buffering capabilities and water quality are minimized to the greatest feasible extent by careful integration of construction with the site. Significant erosion, sediment transport, land settlement or environmental degradation of the site shall be identified in the environmental assessment report prepared for or used in the review of the development, or described in any other study, report, test results or comparable documents.

(c) Amentity policies in the first tier shall be as follows:

(1) to protect and, where feasible or appropriate, enhance and increase public coastal recreational uses, areas and facilities;

(2) to protect and enhance the characteristics of those coastal areas which are most valued by the public as amenities and which are scarce, or would be significantly altered in character by development, or which would cause significant environmental degradation if developed;

(3) to preserve agricultural land uses in the coastal zone by encouraging either maintenance of such present agricultural use or use as open-space areas;

(4) to incorporate visual concern into the early stages of the planning and design of facilities proposed by siting in the coastal zone and, to the extent feasible, maintain or expand visual access to the coastline and coastal waters;

(5) to foster, protect, improve, and ensure optimum access to, and recreational opportunities at, the shoreline for all the people consistent with public rights, constitutionally-protected rights of private property owners, and the need to protect natural resources from overuse;

(6) to ensure that development will not interfere with the public's right of access to the sea where acquired through customary use, legislative authorization or dedication, including without limitation the use of beaches to the landward extent of the shoreline;

(7) to require, in the discretion of the appropriate Committee of the Commission, that public access from the nearest public roadway to the shoreline be dedicated in land subdivisions or in new development projects requiring a major coastal zone permit. Factors to be considered in requiring such dedication of public access include (i) whether it is consistent with public safety or protection of fragile coastal zone resources; (ii) whether adequate public access exists nearby; (iii) whether existing or proposed uses or development would be adversely affected; (iv) consideration of the type of shoreline and its appropriate potential recreational, educational, and scientific uses; and (v) the likelihood of trespass on private property resulting from such access and availability of reasonable means for avoiding such trespass. Dedicated accessways shall not be required to be open to public use until a public agency or private association agrees to accept responsibility for providing off-street parking areas and for maintenance and liability of the accessway, shoreline and beach areas. Nothing in this subsection shall be construed as restricting existing public access nor shall it excuse the performance of duties and responsibilities of public agencies as provided by law to acquire or provide access to the shoreline. This provision shall not be construed as requiring free use of private facilities on land adjoining any beach or shoreline but only as requiring access to the beach or shore-

line to the general public as a condition precedent to the grant of a coastal zone permit.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 293.

§ 907. The Coastal Land and Water Use Plan

The Coastal Land and Water Use Plan, identified as Document Numbers LWUP-1-4, inclusive, are hereby approved and shall be implemented. This plan shall be used to the maximum extent feasible as the long-range guide by the Commission, Commissioner, Virgin Islands Planning Office and any other agency of the Government of the Virgin Islands, in reviewing and recommending zoning amendments, capital improvement programs or projects, public land acquisition or disposition, designating areas of particular concern, and other development activities within the first tier of the coastal zone, but excluding development activities requiring a coastal zone permit under section 910 of this chapter. The Coastal Land and Water Use Plan is not intended to change any of the existing zoning district maps, or place any limitations on any of the uses permitted in the zoning districts established pursuant to Title 29, chapter 3, of this Code.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 297.

§ 908. Coastal zone boundary maps

The boundaries and identification of the coastal zone, including the first and second tier established by this chapter, are shown on the Coastal Zone Management Plan Maps, identified as Document Number STCZM-1 to 5, SCCZM-1 to 11, SJCZM-1 to 4, and OICZM-1, inclusive, which are filed in the Office of the Lieutenant Governor (with copies in the offices of the Commissioner and the Virgin Islands Planning Office), and shall be interpreted by the Commissioner. Such maps are hereby declared to be part of this chapter as if fully set forth herein.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 297.

§ 909. Areas of particular concern

The Commission may recommend, after reasonable notice and public hearings, designation of areas of particular concern within the first tier of the coastal zone and submit such recommendations to the Legislature for adoption. In recommending the designation of areas of particular concern, criteria for selection and implementing actions shall be included in a report prepared and adopted by the Commission.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 297.

§ 910. Coastal zone permit

(a) *When required, terms and conditions*

(1) On or after the effective date of this chapter, any person wishing to perform or undertake any development in the first tier of the coastal zone, except as provided in subsection (b) of this section, shall obtain a coastal zone permit in addition to obtaining any other permit required by law from any public agency prior to performing or undertaking any development.

(2) A permit shall be granted for a development if the appropriate Committee of the Commission or the Commissioner, whichever is applicable, finds that (A) the development is consistent with the basic goals, policies and standards provided in sections 903 and 906 of this chapter; and (B) the development as finally proposed incorporates to the maximum extent feasible mitigation measures to substantially lessen or eliminate any and all adverse environmental impacts of the development; otherwise the permit application shall be denied. The applicant shall have the burden of proof to demonstrate compliance with these requirements.

(3) Any coastal zone permit that is issued shall be subject to reasonable terms and conditions imposed by the appropriate Committee of the Commission or the Commissioner, whichever is applicable, in order to en-

sure that such development will be in accordance with the provisions of this chapter. To this end, any of the development provisions in section 229 of Title 29, chapter 3, of this Code may be made more or less restrictive by the appropriate Committee of the Commission in the case of a major coastal zone permit and more restrictive by the Commissioner in the case of a minor coastal zone permit.

(4) In connection with any land subdivision or major coastal zone permit issued for development adjacent to the shoreline, the appropriate Committee of the Commission may require the dedication of an easement or fee interest in land for reasonable public access from public highways to the sea in accordance with section 906, subsection (c), paragraph (7) of this chapter.

(b) *When not required or may be waived.*

(1) Notwithstanding any provision in this chapter to the contrary, no coastal zone permit shall be required pursuant to this chapter for activities related to the repair or maintenance of an object or facility located in the coastal zone, where such activities shall not result in an addition to, or enlargement or expansion of, such object or facility.

(2) Where immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities or services destroyed, damaged, or interrupted by natural disaster or serious accident, or in other cases of emergency, the requirement of obtaining a permit under this section may be waived by the appropriate Committee of the Commission or the Commissioner upon notification to the Commissioner of the type and location of the work and the name of the person or public agency conducting the work.

(c) *Standards for major and minor coastal zone permits.* A major coastal zone permit shall be issued by the appropriate Committee of the Commission for all approved applications for development except:

(1) a development which is to be conducted completely or substantially seaward of the line of mean high tide and is designated by the appropriate Committee of the Commission pursuant to subsection (e), paragraph (5) of this section; or

(2) a development which is to be conducted completely landward of the line of mean high tide and satisfies one of the following criteria:

(A) the development consists of a subdivision, or the construction of one or two single-family residences or a duplex on any parcel of record on the effective date of this chapter; or

(B) the development consists entirely of improvements to an existing structure, which improvements cost the developer less than fifty-two thousand dollars ($52,000); or

(C) the development consists of one or more structures valued in their entirety at less than seventy-five thousand dollars ($75,000); or

(D) the development consists of any other development, except the extraction of minerals, valued at less than sixty-six thousand dollars ($66,000); or

(E) the development consists of the extraction of minerals valued at less than seventeen thousand dollars ($17,000). In which case a minor coastal zone permit shall be issued by the Commissioner; Provided, however, That if the Commissioner, upon reviewing any minor permit application submitted pursuant to subsection (d), paragraph (3) of this section, determines that the proposed activity is likely to have significant adverse environmental consequences he shall, upon giving notice to the

applicant, forward such application to the appropriate Committee of the Commission for review as a major coastal zone permit.

(d) *Coastal zone permit procedures.*

(1) Upon submission of any application for a coastal zone permit, which application shall specify the type of permit being sought, the Commissioner shall determine whether such application is complete. If the Commissioner determines that such application is not complete, he shall promptly notify, in no event more than 15 days after receipt thereof, the applicant of the deficiencies in such application.

(2) Upon determination by the Commissioner that an application for a major coastal zone permit is complete, the Commissioner shall promptly transmit a copy thereof to all relevant public agencies for review and comment within thirty days of the receipt thereof, and shall schedule a public hearing to be conducted by the appropriate Committee of the Commission on such application, said hearing to be held within sixty days of the receipt of such completed application.

(3) Upon receipt of an application for a minor coastal zone permit which is deemed complete by the Commissioner, the Commissioner shall promptly give written notice of the filing of such application to any person who requests such notification in writing. In addition, the Commissioner shall give such notice to any person who he determines would be affected by or any person interested in such development. Upon a request from any such person, the Commissioner shall transmit a copy of the application and shall request comments thereon within thirty days thereafter.

(4) The appropriate Committee of the Commission shall act upon a major coastal zone permit application within thirty days after the conclusion of the public hearing required by paragraph (2) of this subsection,

and the Commissioner shall act upon a minor coastal zone permit application within sixty days after receipt thereof. Failure of the appropriate Committee of the Commission or the Commissioner to act within any time limit specified in this paragraph shall constitute an action taken and shall be deemed an approval of any such application. A copy of the decision of the appropriate Committee of the Commission or the Commissioner, whichever is applicable, or an application for a coastal zone permit shall be transmitted in writing to the applicant and to any person who requests a copy thereof.

(5) Any action by the appropriate Committee of the Commission or the Commissioner shall become final after the forty-fifth day following a decision, unless an appeal is filed with the Board of Land Use Appeals within such time. If such an appeal is filed, the operation and effect of the Committee's or the Commissioner's action shall be stayed pending a decision on appeal.

(6) If an application for a permit is denied by the appropriate Committee of the Commission pursuant to subsection (a), paragraph (2) of this section, or by the Board of Land Use Appeals pursuant to section 914 of this chapter, the applicant may submit another application for a coastal zone permit no sooner than one hundred-twenty days after the date of such denial.

(7) Any development approved pursuant to this chapter, including any action by the Board of Land Use Appeals, shall be commenced, performed and completed in compliance with the provisions of the permits for such development granted or issued by the appropriate Committee of the Commission, the Commissioner, the Board of Land Use Appeals or any other public agency. Any development or construction approved by a coastal zone permit shall be commenced within twelve months from the date such permit is issued. Failure to commence development or construction within such period shall cause the permit to lapse and render it null and void unless an

extension is granted by the appropriate Committee of the Comission or the Commissioner.

(e) *Regulations.* The Commission shall, in the manner required by law and after public hearings, adopt such supplementary regulations pertaining to the issuance of coastal zone permits as it deems necessary. The Commission may thereafter, in the manner required by law, and from time to time, after public hearings, modify or adopt additional regulations or guidelines as deemed necessary to carry out the provisions of this chapter; Provided, any such rules, regulations, or guidelines issued by the Commission pursuant to this chapter may be modified, amended or revised by the Legislature in accordance with the provisions of subsection (b), section 913 of Title 3 of this Code. Such regulations shall include but are not limited to the following:

(1) procedures for the submission, review and denial or approval of coastal zone permit applications, and the form of application for coastal zone permits. The Commissioner shall devise a temporary application form which shall be used upon enactment of this chapter until such time as rules and regulations are adopted;

(2) information to be required in the application including without limitation, proof or legal interest in the property, authority to sign the application, drawings, maps, data and charts concerning land and water uses and areas in the vicinity of the proposed development and, for major coastal permits, a completed environmental assessment report as defined in section 902, subsection (*o*) of this chapter and appropriate supplementary data reasonably required to describe and evaluate the proposed development and to determine whether the proposed development complies with statutory criteria under which it might be approved;

(3) any person who must alter trust lands or submerged or filled lands in order to compile the data re-

quired by this section must obtain prior written authorization from the appropriate Committee of the Commission for such alteration;

(4) the payment of a reasonable filing fee for the processing by the appropriate Committee of the Commission or the Commissioner of any application for a coastal zone permit. The funds received under this paragraph shall be placed in the Natural Resources Reclamation Fund as described and provided for in section 911, subsection (f), paragraph (A) of this chapter;

(5) designation of the types of development to be conducted completely or substantially seaward of the line of mean high tide requiring a minor coastal zone permit, including but not limited to swimming or navigation buoys, moorings for vessels, small intake and outfall pipes, small private piers, small boat ramps or slips, and underwater transmission lines or cables;

(6) standards in addition to those set out in subsection (c) of this section for determining whether a development requires a minor coastal zone permit or a major coastal zone permit;

(7) requirements for the conduct and continuance of public hearings and the methods of providing public notice on major coastal zone permits. A public notice shall at a minimum state the nature and location of the proposed development, and the time and place of the public hearing, and shall be advertised in a newspaper of general circulation, and in addition be given to the applicant, any person who requests such notification in writing, any person who the Commissioner determines would be affected by or interested in such development, and the owner(s) of any/all lot(s) within or adjacent to the site of the proposed development. Joint public hearings may be held in conjunction with any such hearing required by any federal agency;

(8) contents of coastal zone permits;

(9) notifications of denial of applications;

(10) notices of completion and certificates of acknowledgment of compliance;

(11) amendment, modification and revocation of coastal zone permits;

(12) transfer or assignment of coastal permits.

(f) *The Commissioner as Zoning Administrator.* The Commissioner, pursuant to the provisions of Title 29, section 235, subsection (a), unnumbered paragraph 2 of this Code, as amended, shall perform the duties of the Zoning Administrator with respect to the administration and enforcement of the Zoning Law within the first tier of the coastal zone, and the issuance of a coastal zone permit shall constitute compliance with the requirements of the zoning law.

(g) *Coordination with other permit requirements.* Where the development or occupancy of trust lands or other submerged or filled lands, or other development in the coastal zone, requires separate and distinct approval from the United States Government or any agency, department, commission or bureau thereof, the coastal zone permit shall be contingent upon receipt of all other such permits and approvals, and no such development or occupancy shall commence prior to receipt of all such permits and approvals.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 298.

§ 911. Additional requirements for development or occupancy of trust lands or other submerged or filled lands

(a) *Permit required prior to development or occupancy.*

(1) No person shall develop or occupy the trust lands or other submerged or filled lands of the Virgin Islands without securing a coastal zone permit which includes, in addition to the elements of a section 910 permit, a

permit or lease for the development or occupancy of the trust lands or other submerged or filled lands.

(2) The provisions of this section shall be in addition to all other requirements of this chapter, and shall apply to all applications for, and issuance of, permits for development or occupancy of the trust lands or other submerged or filled lands, and for modifications or renewals of permits or leases for such development or occupancy issued prior to the effective date of this chapter.

(b) *Applications and procedures.*

(1) The Commission shall, in the manner required by law, adopt regulations governing the filing, content, review and processing of applications for coastal zone permits that include development or occupancy of trust lands or other submerged or filled lands; Provided, however, That all applications for coastal zone permits that include development or occupancy of trust lands or other submerged or filled lands, shall include:

(A) an environmental assessment report, as defined in section 902, subsection (*o*) of this chapter, of the prevailing environmental conditions of the site and adjacent properties. The report must clearly indicate probable effects, including adverse effects, to the general environment should the proposed alteration be implemented;

(B) a complete and exact written description of the proposed site, including charts, maps, photographs, topographic charts, submerged land contours, and subsurface profiles in accordance with the scope and complexity of the work and the site;

(C) a complete and exact written description of the proposed occupancy or development for which the permit is sought, defining construction methods. This description must include the details of supervisory and control procedures and credentials of the personnel responsible for this function;

(D) á written statement of alernatives, if any, to the proposed alteration.

(2) The applicant for a coastal zone permit that includes development or occupancy of trust lands or other submerged or filled lands shall have the burden of proof in demonstrating that it meets the requisite criteria established by this section.

(3) The appropriate Committee of the Commission or the Commissioner may recommend such reasonable terms and conditions to be included in any coastal zone permit that includes an occupancy or development permit or lease issued pursuant to this section as it deems necessary to ensure that such occupancy and development will be in accordance with the provisions of this chapter.

(c) *Additional findings necessary.* The appropriate Committee of the Commission or the Commissioner shall deny an application under section 910 hereof for a coastal zone permit which includes development or occupancy of trust lands or other submerged or filled lands, unless it or he makes all of the following findings:

(1) that the application is consistent with the basic goals of section 903 and with the policies and standards of section 906 of this chapter;

(2) that the grant of such permit will clearly serve the public good, will be in the public interest and will not adversely affect the public health, safety and general welfare or cause significant adverse environmental effects;

(3) that the occupancy and/or development to be authorized by such a permit will enhance the existing environment or will result in minimum damage to the existing environment;

(4) that there is no reasonably feasible alternative to the contemplated use or activity which would reduce the adverse environmental impact upon the trust lands or other submerged or filled lands;

(5) that there will be compliance with the Virgin Islands territorial air and water quality standards;

(6) that the occupancy and/or development will be adequately supervised and controlled to prevent adverse environmental effects; and

(7) that in the case of the grant of an occupancy or development lease, an occupancy or development permit for the filled land is not sufficient or appropriate to meet the needs of the applicant for such lease. The burden of proving such insufficiency or inappropriateness shall be upon the applicant.

(d) *Terms of occupancy and development permits and leases.*

(1) A coastal zone permit that includes an occupancy or development permit shall be issued for a definite term, shall not constitute a property right and shall be renewable only if the requirements of this section for the approval and issuance of such permits are satisfied.

(2) A coastal zone permit that includes an occupancy or development lease shall only be granted for a particular parcel of filled land and for a nonrenewable lease period of not more than 20 years.

(e) *Approval by Governor and ratification by Legislature of coastal zone permits that include development or occupancy of trust lands or other submerged or filled lands.* Any coastal zone permit which the appropriate Committee of the Commission or the Commissioner recommends for approval pursuant to this section, together with the recommendedterms and conditions thereof, shall be forwarded by the Committee or Commissioner to the Governor for the Governor's approval or disapproval within thirty days following the Committee's or Commissioner's final action on the application for the coastal zone permit or the Board's decision on appeal to grant such a permit. The Governor's approval of any such per-

mit or lease must be ratified by the Legislature of the Virgin Islands or, in the event that the Legislature is not in session, by the Committee on Conservation, Recreation and Cultural Affairs of the Legislature. Upon approval and ratification of such permit, occupancy and any development proposed in connection therewith shall not commence until the permittee has complied with the requirements of the United States Army Corps of Engineers pursuant to Title 33 of the United States Code.

(f) *Rental and reclamation fees.*

(1) Coastal zone permits issued to this section shall provide for the payment by the permittee or lessee of a rental fee.

(2) Coastal zone permits issued pursuant to this section which provide for or authorize the dredging and/or removal of sand, gravel, coral or aggregate shall provide for the payment of a reclamation fee.

(3) The Commission shall, in the manner required by law for the adoption of rules and regulations and after public hearings, establish a schedule of reasonable fees for the administration of this section.

(4) Rental and reclamation fees paid pursuant to this section shall be paid to the Commissioner and covered into the Natural Resources Reclamation Fund, which fund is hereby continued by this paragraph, without hiatus, from existing law. The Commissioner of Finance is directed to maintain and provide for the administration of this fund as a separate and distinct fund in the Treasury, and to authorize disbursements therefrom, upon the certification of the Comissioner, to meet expenses incurred in the administration and enforcement of the provisions of this chapter and in the discharge of the Commission's duties thereunder. The Fund shall consist of permit and other fees and fines paid pursuant to the provisions of this chapter, and such other funds as may from time to time be appropriated thereto by the Legislature.

(g) *Modification and revocation.* In addition to any other powers of enforcement set forth in section 913 of this chapter, the Governor may modify or revoke any coastal zone permit that includes development or occupancy of trust lands or submerged or filled lands approved pursuant to this section upon a written determination that such action is in the public interest and that it is necessary to prevent significant environmental damage to coastal zone resources and to protect the public health, safety and general welfare. Such written determination shall be delivered both to the permittee and to the Legislature or its Committee on Conservation, Recreation and Cultural Affairs if the Legislature is not in session, together with a statement of the reasons therefor. It shall state the effective date of such modification or revocation, and shall provide a reasonable time in which the permittee or lessee either may correct the deficiencies stated in such written determination or may establish, to the Governor's satisfaction, that any or all of the deficiencies or reasons stated therein are incorrect. If the permittee shall fail to correct or establish the inaccuracy of such deficiencies or reasons within the time provided in such written determination the modification or revocation of such occupancy permit shall be effective as of the date stated therein; Provided, however, That the Legislature, or its Committee on Conservation, Recreation and Cultural Affairs if the Legislature is not in session, shall ratify the Governor's action within thirty days after said effective date. The failure of the Legislature, or its Committee on Conservation, Recreation and Cultural Affairs if the Legislature is not in session, either to ratify or rescind the Governor's action within said thirty-day period shall constitute a ratification of the Governor's action.

(h) *Transporting of sand or other aggregate.* Every transporter of sand, gravel, coral, aggregate, minerals or other natural products of the sea, excepting fish and wildlife, from the trust lands or other submerged or filled

lands shall display a coastal zone permit and an occupancy permit or lease as proof of authorization for such transport. The contents of such permit or lease and the manner of its display shall be prescribed by the Commissioner by regulation. To enforce this requirement, the Commissioner or his duly authorized representative shall have the right to stop any motor vehicle transporting sand, gravel, coral, aggregate, minerals or other natural products of the sea, excepting fish and wildlife, on the public roads and highways of the Virgin Islands for the purpose of ascertaining whether the material being transported has been taken from the trust lands or other submerged or filled lands and whether a coastal zone permit or occupancy permit or lease has been issued authorizing its removal pursuant to this chapter.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 303.

§ 912. Planning program

(a) *Setting of boundaries, established of titles, identification of access and amendments.* The Commission, with the assistance of the Planning Office, the Attorney General and other public agencies, shall conduct a comprehensive survey of the shorelines of the Virgin Islands to establish the landward boundaries of such shorelines in accordance with this chapter; shall conduct a comprehensive study to determine the existing status of title, ownership and control, in accordance with the provisions of this chapter, of all land within or adjoining the shorelines; and shall prepare surveys, maps and charts showing existing routes of public access to the shorelines.

(b) *Continued planning.* To ensure that the provisions of this chapter are regularly reviewed and the recommendations for revisions of, or amendments to, the Virgin Islands Coastal Zone Management Program will be reviewed and developed, and to supplement the activities of other public agencies in matters relating to the planning for and management of the coastal zone and to provide for continued territorial coastal planning and man-

agement, the Virgin Islands Planning Office shall undertake on a continuing basis such activity and research as is necessary to maintain a continued involvement in the coastal zone management process and shall be responsible, with the assistance of the Commission, for comprehensive planning in the coastal zone, for review of all amendments to the Virgin Islands Coastal Zone Management Program, and for recommending the designation of areas of particular concern.

(c) *Amendments.* Any provisions of this chapter, including the boundaries of the coastal zone and the use designations on the Land and Water Use Plan, may be amended or repealed by the Legislature of the Virgin Islands. The procedures and requirements for such amendment shall be the same as provided in Title 29, section 238 of this Code for amendments to the Zoning Law. All proposed amendments not initiated by the Commission shall be referred by the Planning Office to the Commission for comment prior to public hearing.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 308.

§ 913. Enforcement, penalties and judicial review

(a) *General.* The provisions of this section shall be cumulative and not exclusive and shall be in addition to any other remedies available at law or equity.

(b) *Enforcement.*

(1) Any person may maintain an action for declaratory and equitable relief to restrain any violation of this chapter. On a prima facie showing of a violation of this chapter, preliminary equitable relief shall be issued to restrain any further violation hereof. No bond shall be required for an action under this subsection.

(b) Any person may maintain an action to compel the performance of the duties specifically imposed upon the Commission or the Commission of any public agency by this chapter; Provided, however, That no such action

shall be brought prior to thirty days after written notice has been given to the Commission, its Committees, the Commissioner, or such public agency by the complainant specifying the duties which the complainant alleges have not been performed. No bond shall be required for an action under this subsection.

(3) The appropriate Committee of the Commission and the Commissioner shall regularly monitor a permittee's compliance with the terms and condiitons of its coastal zone permit.

(4) The Commission, its Committees and the Commissioner shall have the power to enter at reasonable times upon any lands or waters in the coastal zone for which a coastal zone permit has been issued, and the permittee shall permit such entry for the purpose of inspecting and ascertaining compliance with the terms and conditions of said coastal zone permit, and to have access to such records as the Commission, its Committees or the Commissioner in the performance of its or his duties hereunder may require permittee to maintain. Such records may be examined and copies shall be submitted to the Commission or Commissioner upon request.

(5) Violation of any term or condition of any coastal zone permit issued or approved pursuant to this chapter shall be grounds for revocation or suspension thereof. Violation of any term or condition of any occupancy or development permit or lease issued prior to the effective date of this chapter shall, to the maximum extent permitted by law, be grounds for revocation or suspension thereof.

(6) When the Commission or Commissioner has reason to believe that any person has undertaken, or is threatening to undertake, any activity that may require a coastal zone permit without securing a coastal zone permit, or that may be inconsistent with any coastal zone permit previously issued, the Commission or Com-

missioner may issue a written order directing such person to cease and desist. The cease and desist order shall state the reasons for the Commission's or Commissioner's decision and may be subject to such terms and conditions as the Commission or Commissioner deems necessary to insure compliance with the provisions of this chapter including, without limiting, immediate removal of any fill or other material, suspension of the coastal zone permit, or the setting of a schedule within which steps must be taken to obtain a coastal zone permit pursuant to this chapter. Said order shall be served by certified mail or hand delivery upon the person being charged with the actual or threatend violation of this chapter, and shall be effective upon issuance; Provided, however, That such order shall grant the opportunity for a hearing.

(7) In addition to any other remedy provided herein or at law or equity, the Attorney General, the Commission or Commissioner may institute a civil action in the District Court of the Virgin Islands for an injunction or other appropriate relief, including revocation of a permit issued hereunder, or an order to prevent any person from violating the provisions of this chapter, including occupying or developing the trust lands or other submerged or filled lands, or to enforce any cease and desist order or any regulations issued hereunder.

(c) *Penalties.*

(1) Any person who violates any provision of this chapter, or any regulation or order issued hereunder, shall be subject to a civil fine of not to exceed ten thousand ($10,000) dollars.

(2) Any violation of this chapter or any regulation or order issued hereunder shall constitute a misdemeanor. Any person convicted of such a violation shall be fined in accordance with the provisions of subsection (c), paragraph (1) hereinabove, or imprisoned not more than one year, or both.

(3) In addition to any other penalties provided by law, any person who intentionally and knowingly performs any development in violation of this chapter shall be subject to a civil fine of not less than one thousand dollars nor more than ten thousand dollars per day for each day during which such violation occurs.

(4) In addition to the foregoing and in order to deter further violations of the provisions of this chapter, the Attorney General, the Commission or Commissioner may maintain an action for exemplary damages, the amount of which is left to the discretion of the court, against any person who has intentionally and knowingly violated any provisions of this chapter.

(5) All civil penalties permitted herein shall be assessed by the appropriate court; Provided, however, That at such time, if any, that the Commission may promulgate rules and regulations establishing a procedure for the administrative assessment of civil penalties, it or the Commissioner shall have the alternative of proceeding by means of court assessment or such administrative procedure. The Commission is hereby authorized to promulgate all rules and regulations it deems necessary to implement the alternatives allowed by this paragraph.

(6) All fines collected under the provisions of this subsection (c) shall be deposited into the Natural Resources Reclamation Fund provided for in section 911, subsection (f), paragraph (4) of this chapter.

(d) *Judicial review—Writ of Review.* Pursuant to Title 5, chapter 97 and Appendix V, Rules 10 and 11 of this Code, a petition for writ or review may be filed in the District Court of the Virgin Islands in the case of any person aggrieved by the granting or denial of an application for a coastal zone permit, including a permit or lease for the development or occupancy of the trust lands or other submerged or filled lands, or the issuance of a cease and desist order, within forty-five days after

such decision or order has become final provided that such administrative remedies as are provided by this chapter have been exhausted.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 309.

§ 914. Board of Land Use Appeals

(a) *Administrative appeals or coastal zone permit applications.* Notwithstanding any provision of law to the contrary, any aggrieved person may file an appeal of an action by the Commission, its Committees, or the Commission taken pursuant to section 910 or 911 of this chapter within forty-five days thereof with the Board of Land Use Appeals, and such appeals shall be governed solely by the provisions of this section.

(b) *Procedures on appeal.* The Board shall prepare a form of application for such appeals and shall adopt in the manner required by law rules and regulations governing the submission and review of applications for appeal and the notice and procedures for conduct of public hearings on such an appeal. In addition to public notice, personal notice of such a public hearing on an appeal shall be served on the Commission or its Committees, the Commissioner, the applicant for the coastal zone permit and the aggrieved person, if they be different, any person who has requested in writing to be notified of such public hearing date, and any person who testified at the public hearing held by the appropriate Committee of the Commission to consider the original application.

(c) *Public hearings.* A public hearing on an appeal shall be held by the Board within sixty days after the appeal is filed with the Board, and a decision shall be rendered by the Board within thirty days after the conclusion of such public hearing. The Board shall notify the Commission or its Committee, the Commissioner, the applicant for the coastal zone permit and the aggrieved person, if they be different, of its decision by certified mail. Notice to all other persons who received notice of

the public hearing on appeal may be by regular mail. Such notice shall be sent within four working days of the Board's decision.

(d) *Actions of the Board.* The Board, by majority vote of its authorized members, shall either affirm or reverse the Commission's or its appropriate Committee's or the Commissioner's action and shall either approve or deny an application for a coastal zone permit. If the Board grants an application for a coastal zone permit, the Board shall impose such reasonable terms and conditions on such permit as it deems necessary to achieve the objectives and purposes of this chapter. The Board shall set forth in writing and in detail the reasons for its decision and findings of fact upon which its decision is based. If the Board reverses a Committee's or the Commissioner's action on a coastal zone permit, it must make all of the findings required by section 910, subsection (a), paragraphs (2), (3) and (4) of this chapter. A copy of the Board's action shall be available for public inspection at the Board's offices during ordinary business hours. The Board's action shall be final after four working days allowing its decision.—Added Oct. 31, 1978, No. 4248, § 1, Sess. L. 1978, p. 312.

§ 1471. Local or special laws

The legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say:

Granting divorces.

Changing the names of persons or places.

Laying out, opening, altering, and working roads or highways.

Vacating roads, town plats, streets, alleys, and public grounds.

Locating or changing county seats.

Regulating county and township affairs.

Regulating the practice in courts of justice.

Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables.

Providing for changes of venue in civil and criminal cases.

Incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village.

For the punishment of crimes or misdemeanors.

For the assessment and collection of taxes for Territorial, county, township, or road purposes.

Summoning and impaneling grand or petit jurors.

Providing for the management of common schools.

Regulating the rate of interest on money.

The opening and conducting of any election or designating the place of voting.

The sale or mortgage of real estate belonging to minors or others under disability.

The protection of game or fish.

Chartering or licensing ferries or toll bridges.

Remitting fines, penalties, or forfeitures.

Creating, increasing, or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed.

Changing the law of descent.

Granting to any corporation, association, or individual the right to lay down railroad tracks, or amending existing charters for such purpose.

Granting to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States by the Territorial legislatures thereof. July 30, 1886, c. 818, § 1, 24 Stat. 170.

§ 1471. Repealed. Pub. L. 98-213, § 16(w), Dec. 8, 1983, 97 Stat. 1463

TITLE 1 VIRGIN ISLANDS CODE

§ 4. Application of common law; restatements

The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Virgin Islands in cases to which they apply, in the absence of local laws to the contrary.

RESTATEMENT OF PROPERTY

§ 370. Rule against Perpetuities—Limitation of a Future Interest in Favor of One Other than the Conveyor.

Subject to exceptions stated in §§ 373 (destructible interest), 395 (option in a lessee), 397 (charity), and 400 (unissued shares of a corporation), the limitation of a future interest in favor of one other than the conveyor is invalid when, under the language and circumstances of such limitation, such future interest may continue to be subject to an unfulfilled condition precedent for longer than the maximum period described in § 374.

§ 374. Permissible Period under Rule against Perpetuities.

The maximum period allowed under the rule against perpetuities is

(a) lives of persons who are

(i) in being at the commencement of such period, and

(ii) neither so numerous nor so situated that evidence of their deaths is likely to be unreasonably difficult to obtain; and

(b) twenty-one years; and

(c) any period or periods of gestation involved in the situation to which the limitation applies.

§ 393. Option Limited in Favor of One Other than the Conveyor.

Subject to exceptions stated in §§ 373 (destructible interest), 395 (option in a lessee), 397 (charity) and 400 (unissued shares of a corporation), the limitation of an option in favor of a person other than the conveyor is invalid because of the rule against perpetuities when,

under the language and circumstances of the limitation, such opiton

(a) may continue for a period longer than the maximum period described in § 374; and

(b) would create an interest in land, or in some unique thing other than land, but for the rule against perpetuities

§ 402. Partial Invalidity—Effect on Balance of Attempted Disposition.

When part of an attempted disposition fails as a direct consequence of the rule against perpetuities, the effect, if any, of this partial invalidity upon the balance of the attempted disposition is determined by judicially ascertaining whether the conveyor, if he had known of this partial invalidity, would have preferred that

(a) all the balance of the attempted disposition take effect, in accordance with its terms; or that

(b) certain parts of the balance of the attempted disposition fail, but the rest thereof take effect in accordance with its terms; or that

(c) all the balance of the attempted disposition fail.

RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF UNITED STATES

TOPIC 1. INTERNATIONAL LAW

§ 155. Special Provisions in Agreement

An international agreement may be modified, suspended, or terminated in accordance with provisions included for that purpose in the agreement.

§ 156. Consent of Parties

An international agreement may be modified, suspended, or terminated by the consent of the parties,

except that when an international agreement confers a right, as indicated in § 139, upon a state not a party to the agreement, the consent of that state is required for the modification, suspension, or termination of the right, if either

(a) the agreement provides for acceptance of the right and it has been accepted, or

(b) there is no such provision but the state has changed its position in reliance upon the continuing existence of the right and its modification, suspension, or termination would be a substantial detriment to the state.

c. *Consent of all parties essential.* The consent must be the consent of all parties if the agreement is to be validly modified, suspended, or terminated with respect to all parties. If not unanimous, the modification, suspension, or termination of the agreement is effective as between the parties so consenting but may constitute a violation of the rights of the other parties under the agreement.

TOPIC 2. LAW OF THE UNITED STATES

§ 163. Authority to Modify, Suspend, or Terminate

(1) Under the law of the United States, the President or a person acting under his authority, has, with respect to an international agreement to which the United States is a party, the authority to

(a) take the action necessary to accomplish under the rule stated in § 155 the suspension or termination of the agreement in accordance with provisions included in it for the purpose,

(b) make the determination of conditions that establish that the agreement may be suspended or terminated under the rule stated in § 158 because of its violation by another party or that it is terminated

under the rule stated in § 159 as regards a party that has ceased to exist,

(c) elect in a particular case not to suspend or terminate the agreement when the United States may do so under the rule stated in § 158 because of violation of the agreement, or not to pursue a claim that the United States has under the rule stated in § 3(1)(a) for the violation of international law resulting from violation of the agreement.

(2) The modification, suspension, or termination of an international agreement to which the United States is a party, by the consent of the parties under the rule stated in § 156, is subject to the same rules as apply to the making of an international agreement as stated in §§ 117-121.